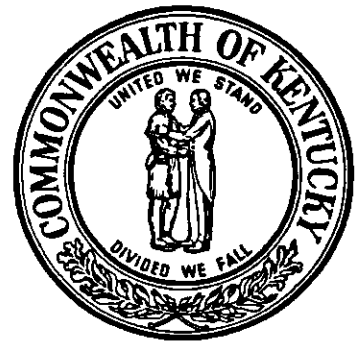


# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 35, NUMBER 3  
MONDAY, SEPTEMBER 1, 2008

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#### MEETING NOTICE: ARRS

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet September 9, 2008 at 10 a.m. in room 149 Capitol Annex. See tentative agenda on pages 501-503 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2008 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

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**KENTUCKY ADMINISTRATIVE REGULATIONS** are codified according to the following system and are to be cited by Title, Chapter and Regulation number, as follows:

Title		Chapter	Regulation
806	KAR	50:	155
Cabinet, Department, Board, or Agency		Office, Division, Board, or Major Function	Specific Regulation

#### **ADMINISTRATIVE REGISTER OF KENTUCKY**

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA, SEPTEMBER 9, 2008, at 10:00 a.m., Room 149 Capitol Annex**

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103 KAR 3:050. Miscellaneous Taxes Forms manual. (Deferred from August)

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301 KAR 2:132. Elk depredation permits, landowner cooperators permits, and hunts.

301 KAR 2:176. Deer control tags and destruction permits.

301 KAR 2:300. Black bears.

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301 KAR 4:070. Scientific and educational collecting permits.

### **ENERGY AND ENVIRONMENT CABINET Department of Environmental Protection Division of Water**

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401 KAR 5:010. Operation of wastewater systems by certified operators.

401 KAR 5:012. Repeal of 401 KAR 5:040.

401 KAR 5:052. Requirements applicable to cooling water intake structures for facilities regulated by Section 316(b) of the Clean Water Act, 33 U.S.C. 1326(b).

401 KAR 5:057. KPDES pretreatment requirements.

#### **Water Wells**

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401 KAR 6:310. Water supply well construction practices and standards. (Amended After Comments)

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401 KAR 11:050. Operator certification.

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### **TRANSPORTATION CABINET Department of Vehicle Regulation**

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### **EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education**

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702 KAR 7:130 & E. Approval of innovative alternate school calendars. ("E" expires 12/13/2008)

#### **Archives**

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#### **Department for Workforce Development**

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### **LABOR CABINET Department of Workers' Claims**

#### **Workers' claims**

803 KAR 25:089 & E. Workers' compensation medical fee schedule for physicians. ("E" expires 12/28/2008)

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### **PUBLIC PROTECTION CABINET Department of Insurance**

#### **Health Insurance Contracts**

806 KAR 17:180 & E. Standard health benefit plan. ("E" expires 1/11/2009)

806 KAR 17:310. Prompt payment of claims reporting requirements.

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#### **Horse Racing Authority**

#### **Thoroughbred Racing**

810 KAR 1:012. Horses.

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810 KAR 1:015. Claiming races. (Not Amended After Comments) (Deferred from May)

810 KAR 1:025. Licensing thoroughbred racing.

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811 KAR 1:070. Licensing standardbred racing

### **CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy**

#### **Certificate of Need**

900 KAR 6:050 & E. Certificate of need administrative regulation. ("E" expires 10/26/08) (Not Amended After Comments)

#### **Office of the Secretary**

#### **E-Health**

900 KAR 7:020. Kentucky e-Health Corporation. ("E" expired 3/16/08) (Deferred from December)

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907 KAR 1:825 & E. Diagnosis-related group (DRG) inpatient hospital reimbursement. ("E" expires 12/13/2008)

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## **MOVED TO OCTOBER 2008 AGENDA DUE TO DEFERRAL OR RECEIPT OF COMMENTS**

### **ENERGY AND ENVIRONMENT CABINET Department of Environmental Protection Division of Water**

#### **Water Quality Standards**

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401 KAR 10:026. Designation of uses of surface waters. (Comments Received)

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401 KAR 10:030. Antidegradation policy implementation methodology. (Comments Received)

401 KAR 10:031. Surface water standards. (Comments Received)

#### **Division for Air Quality**

#### **General Administrative Procedures**

401 KAR 50:066. Conformity of transportation plans, programs, and projects. (Hearing/Written Comments)

### **CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services**

#### **Medicaid Services**

907 KAR 1:015. Payments for outpatient hospital services. (Written Comments Received)

**ADMINISTRATIVE REGULATION REVIEW PROCEDURE - OVERVIEW  
(See KRS Chapter 13A for specific provisions)**

**Filing and Publication**

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing and comment period information, regulatory impact analysis and tiering statement, fiscal note, federal mandate comparison, and incorporated material information. Those administrative regulations received by the deadline established in KRS 13A.050 shall be published in the Administrative Register.

**Public Hearing and Public Comment Period**

The administrative body shall schedule a public hearing on proposed administrative regulations which shall not be held before the 21st day or later than the last workday of the month of publication. Written comments shall also be accepted until the end of the calendar month in which the administrative regulation was published.

The administrative regulation shall include: the place, time, and date of the hearing; the manner in which persons may submit notification to attend the hearing and written comments; that notification to attend the hearing shall be sent no later than 5 workdays prior to the hearing date; the deadline for submitting written comments; and the name, position, address, and telephone and fax numbers of the person to whom notification and written comments shall be sent.

The administrative body shall notify the Compiler, by phone and letter, whether the hearing was held or cancelled and whether written comments were received. If the hearing was held or written comments were received, the administrative body shall file a statement of consideration with the Compiler by the fifteenth day of the calendar month following the month of publication.

A transcript of the hearing is not required unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

**Review Procedure**

After the public hearing and public comment period processes are completed, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or 30 days after being referred by LRC, whichever occurs first.

EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, AUGUST 15, 2008

STATEMENT OF EMERGENCY  
31 KAR 4:140E

The Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff-1, allows the Department of Defense Federal Voting Assistance Program to implement a system by which deployed military and overseas citizens may expedite the absentee voting process using existing online technology. The State Board of Elections received notification of the initiation of the server on July 14, 2008. This emergency amendment to the administrative regulation must be placed into effect immediately to apply to the general election and to not interfere with the constitutional right to vote of members of the military and overseas citizens. This amendment to the administrative regulation updates the forms necessary to carry out the procedures established by this administrative regulation. The reasons why an ordinary amendment to the administrative regulation is not sufficient: An ordinary amendment to the administrative regulation is not sufficient because it may not be effective until after the general election or until after absentee voting has begun for the general election, and may interfere with the constitutional right to vote of members of the military and overseas citizens. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor  
TREY GRAYSON, Chairman

KENTUCKY STATE BOARD OF ELECTIONS  
(Emergency Amendment)

**31 KAR 4:140E. Submitting a Federal Post Card Application and absentee ballot request electronically.**~~[Submitting absentee ballot applications to the Department of Defense Interim Voting Assistance System (IVAS) by electronic mail.]~~

RELATES TO: KRS 116.995, 117.079, 117.085, 117.995, 119.265, 369.107, and 42 U.S.C. 1973

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.079, 42 U.S.C. 1973ff-1

EFFECTIVE DATE: August 8, 2008

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.079 requires the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General. The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 42 U.S.C. 1973ff, authorizes the Department of Defense to implement a voting~~[an interim voting]~~ assistance system for the purposes of expediting the absentee voting process for deployed members of the Armed Forces of the United States using existing ~~[e-mail]~~ technology. This administrative regulation implements a process for local elections officials to participate in the Department of Defense's system~~[IVAS]~~.

Section 1. Section 1. Definitions. (1) "Absentee ballot application" means the Federal Post Card Application, Standard Form 76, electronically sent to the county clerk from FVAP~~[mailed to the county clerk from IVAS]~~.

(2) "FVAP" means the Federal Voting Assistance Program, an office within the Department of Defense responsible for administering UOCAVA.

(3) "Instructions to voter sheet" means the "Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed or Electronically Sent an Absentee Ballot," SBE 46A.~~"IVAS" means the Department of Defense Interim Voting Assistance System.~~

(4) "Registered voter" means a resident of Kentucky who is

eligible to vote and is a military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States~~[deployed member of the Armed Forces of the U.S.]~~

(5) "Voter verification sheet" means the SBE 46A, the form the registered voter signs and the voter assistance oath.

Section 2. Any county clerk's office that has online capabilities shall follow the process established by this administrative regulation in administering the Department of Defense's system through FVAP for the electronic transmission of Federal Post Card Applications and absentee ballot requests.

Section 3. Processing a Completed Application electronically~~[by Electronic Mail]~~. (1) If notification of a voter's~~[the]~~ absentee ballot application is received electronically from FVAP~~[by electronic mail from IVAS]~~ less than seven (7) days before the applicable election, the county clerk shall not process the application.

(2) If notification of a voter's~~[the]~~ completed absentee ballot application is received electronically from FVAP~~[by electronic mail from IVAS]~~ not less than seven (7) days before the election, then the county clerk shall affix his or her seal to the absentee ballot application.

(3) The county clerk shall then verify the voter's eligibility. If the voter is eligible to vote in the current election, then the county clerk shall prepare an electronic copy, in a manner prescribed by FVAP~~[Portable Document Format (PDF)]~~ of the original absentee ballot. The original absentee ballot is then marked "Electronically Sent to FVAP~~[Mailed to IVAS]~~" and retained.

(4) The original absentee ballot shall not be reused. The electronic copy of the original absentee ballot shall be sent electronically to FVAP~~[by electronic mail to IVAS]~~, along with the Instructions to voter sheet and the voter verification sheet.

Section 4.~~[Section 3.]~~ Voter's Instructions on Completing an Electronic Absentee Ballot Received From FVAP~~[IVAS]~~. (1) When a voter receives an absentee ballot electronically from FVAP~~[by electronic mail]~~, the voter shall print the absentee ballot, mark the absentee ballot and seal it in an inner envelope.

(2) The voter shall then complete and sign the Voter Verification Sheet. If the voter requires assistance, the person rendering assistance shall complete the voter assistance section on the voter verification sheet.

(3) The voter shall print his or her name, voting address and precinct number on the back of the outer envelope as found on the voter verification sheet. The voter shall then seal the voter verification sheet and the inner envelope containing the absentee ballot in an outer envelope. The voter shall then sign across the back flap of the outer envelope. The voter shall print "Absentee Ballot" on the front of the outer envelope, but shall not obstruct the address area.

(4) The voter shall mail the envelope to the appropriate county clerk. The absentee ballot shall be required to be received, by 6 p.m. local time on Election Day~~[election day]~~, to the county clerk through the mail in order to be counted.

Section 5. If any person has knowledge of a failure to execute the duties established by this administrative regulation, the person shall contact the State Board of Elections or the Attorney General's Office to make a complaint of a violation in accordance with KRS 116.995, 117.995(2), or 119.265.

Section 6.~~[Section 4.]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Federal Post Card Application", Standard Form 76 (Rev. 10-2005);

(b) SBE 46A - "Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed or Electronically Sent an Absentee Ballot" (August 2008 edition)~~[SBE 46A - "Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed an Absentee Ballot" (December 2005 edition)]~~; and

(c) SBE 46B - "Voter Verification Sheet" (December 2005 edition).~~[.]~~

## VOLUME 35, NUMBER 3 – SEPTEMBER 1, 2008

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Offices of the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TREY GRAYSON, Chair

JACK CONWAY, Attorney General

APPROVED BY AGENCY: August 7, 2008

FILED WITH LRC: August 8, 2008 at 2 p.m.

CONTACT PERSON: Kathryn H. Gabhart, General Counsel,  
Kentucky State Board of Elections, 140 Walnut Street, Frankfort,  
Kentucky 40601, phone (502)573-7100, fax (502) 573-4369.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Gabhart

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: This administrative regulation implements the process by which Kentucky counties shall participate in the Department of Defense Federal Voting Assistance Program online absentee ballot server. This server will help to expedite the absentee voting process for military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, using existing electronic technology. This is a federal initiative under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff-1.

(b) The necessity of this administrative regulation: This regulation is necessary to further the aims of the Uniformed and Overseas Citizens Absentee Voting Act, KRS 117.079, and 117.085, to preserve the absentee voting rights of military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1) and 117.079 authorize the Board to promulgate administrative regulations governing the absentee voting process for military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation provides another option for and expedites the absentee voting process for military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States. Such persons may have little notice of their location on election day or during the days of absentee voting and the regular delays in the mail service make it impractical to follow the normal methods for absentee voting.

(2) If this is an amendment to an existing administrative regulation, provide a brief narrative summary of:

(a) How the amendment will change the existing administrative regulation: This amendment updates the most recent version of the Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed an Absentee Ballot Sheet, SBE 46A, and opens up the regulation to serve not only deployed military, but also their dependents and other Kentucky residents living overseas.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide an expedited absentee voting process to military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by opening up the regulation to serve not only deployed military, but also their dependents and other Kentucky residents living overseas, in accordance with KRS 117.079 and 42 U.S.C. 1973ff-1.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide the most reliable and convenient method in which military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States can vote by absentee ballot.

(3) List the type and number of individuals, businesses, organi-

zations, or state and local governments affected by this administrative regulation: All eligible voters who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States and all county clerks in counties that have online capabilities to enter the Department of Defense Federal Voting Assistance Program server. There are approximately ninety-six (96) counties that have the capability of entering the system.

(4) An assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment to an existing administrative regulation: The county clerks will have to establish a link to the Federal Voting Assistance Program's website, a user ID, and password to participate in the program. The county clerks will receive an email notification when there is activity on their account, such as the notification of a completed FPCA by a voter or a request for an absentee ballot. The county clerks and the voters who are members of the Armed Forces deployed overseas or overseas citizens will benefit from the expedited absentee voting process established by this administrative regulation.

(5) Estimate how much it will cost to implement this administrative regulation:

(a) Initially: The costs for the program are minimal and already included in the existing budget of these entities.

(b) On a continuing basis: The counties will only participate in the program beginning in August of each year a federal election occurs and until the November General Election of that year. Therefore, the costs will be minimal.

(6) The source of funding to be used for the implementation and enforcement of this administrative regulation: The costs must be borne by the counties. The counties are paid a per precinct reimbursement from the state general fund pursuant to KRS 117.345 for election expenses. The costs for the program are minimal and already included in the existing budget of these entities.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are or will be established by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all citizens.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government: Yes

(2) State what unit, part, or division of local government this administrative regulation will affect: All county clerks' offices that have electronic online capabilities to enter the Department of Defense FVAP server. There are ninety-six (96) counties that have online capabilities. State the aspect or service of local government to which this administrative regulation relates: the conduct of elections and absentee voting.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation:

(a) Revenues: This administrative regulation will not generate any revenues for the local governments.

(b) Expenditures: The costs associated with this administrative regulation are minimal and are subsumed in a county's existing election costs.

(c) Other Explanation: N/A

### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: 42 U.S.C. 1973ff-1, the Uniformed and Overseas Citizen Absentee Voting Act.

(2) State compliance standards: KRS 117.015(1) and 117.079



authorize the Board to promulgate administrative regulations governing the absentee voting process for Kentucky residents who are military personnel serving on active duty outside the United States and other Kentucky residents living outside of the United States.

(3) Minimum or uniform standards contained in the federal mandate: This administrative regulation implements procedures for Kentucky counties to follow to participate in the Department of Defense Federal Voting Assistance Program server to expedite the absentee voting process for military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, using existing online technology. This is a federal initiative under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff-1.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements or additional or different responsibilities or requirements than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

#### STATEMENT OF EMERGENCY 101 KAR 2:066E

This emergency amendment codifies and ensures that all agencies in the Executive Branch will immediately implement Veterans' Preference in state hiring. The previous method of awarding Veterans' Preference was to provide an additional five (5) points to a veteran's selection method score, pursuant to KRS 18A.150. However, on May 16, 2008, with the support of all agencies, the Personnel Cabinet eliminated the testing selection method. Therefore, there is no system of Veterans' Preference in operation at this time. This emergency amendment is necessary to ensure that veterans and their families continue to receive the preference they have earned through their dedicated military service and sacrifice, and the emergency regulation must be put into effect immediately. Further, this emergency amendment is necessary to comply with the spirit and intent of KRS 18A.150. An ordinary amendment to the administrative regulation is not sufficient as there is an immediate need for agencies to comply and implement the system of Veterans' Preference. The emergency amendment will be replaced by an ordinary amended administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 18, 2008.

STEVEN L. BESHEAR, Governor  
NIKKI JACKSON, Secretary  
DANIEL F. EGBERS, Executive Director

#### PERSONNEL CABINET (Emergency Amendment)

#### 101 KAR 2:066E. Certification and selection of eligibles for appointment.

RELATES TO: KRS 18A.030(2), 18A.110(1)(b), (7), 18A.150, 18A.165

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(b), (7)

EFFECTIVE DATE: July 18, 2008

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(b) and (7) requires the Secretary of Personnel to promulgate administrative regulations which govern the establishment of eligibility lists for appointment, and for consideration for appointment of persons whose scores are included in the five (5) highest scores on the examination. This administrative regulation establishes the requirements for certification and selection of eligibles for appointment.

Section 1. Request for Certification of Eligibles. To fill a vacant position in the classified service that is not filled by lateral transfer,

reinstatement, reversion or demotion, the appointing authority shall submit a request for a register to the secretary. The request shall:

(1) Be for one (1) or more positions in the same:

(a) Class; or

(b) County;

(2) Indicate:

(a) The number and identity of the positions to be filled;

(b) The title of the job classification for each position; and

(c) Other pertinent information which the appointing authority and the secretary deem necessary; and

(3) Be made by the appointing authority as far in advance as possible of the date the position is to be filled.

Section 2. Certification of Eligible Applicants. (1) Upon receipt of a request for a register, the secretary shall certify and submit to the appointing authority the names of eligible applicants for the position who have applied.

(a) If one (1) position is involved, the secretary shall certify the names of:

1. Each applicant who:

(a) Applied for the vacant position; and

(b) If it is a tested position, has a score in the highest five (5) scores earned through the selection method; and

2. All internal mobility candidates who are eligible and have applied for the vacant position.

(b) If more than one (1) vacancy is involved, the secretary may certify sufficient additional names for the agency's consideration in filling the total number of vacancies.

(c) Each appointment shall be made from:

1. The internal mobility candidate listing of eligible applicants who have applied for the vacant position; or

2. The eligible applicants with the five (5) highest scores who have applied for the vacant position, if applicable.

~~[(b) The eligibles with the five (5) highest scores who have applied for the vacant position, if applicable.]~~

(2) The life of a certificate during which action may be taken shall be ninety (90) days from the date of issue unless otherwise specified on the certificate. An appointment made from the certificate during that time shall not be subject to a change in the condition of the register taking place during that period.

Section 3. Veterans' Preference. (1) Upon request of a register, the secretary shall identify on the register certificate and submit to the appointing authority the names of eligible applicants, including internal mobility candidates, who have applied for the position and are entitled to Veterans' Preference.

(2) The employing cabinet or agency shall offer an interview to at least five (5) of the individuals identified on the register certificate who qualify for Veterans' Preference.

(3) If there are fewer than five (5) individuals identified on the register certificate who qualify for Veterans' Preference, the employing cabinet or agency shall offer an interview to all individuals identified on the register certificate who qualify for Veterans' Preference.

(4) If an individual entitled to Veterans' Preference has been interviewed for a job vacancy in the same classification, the same work county, and by the same employing agency within the preceding six (6) months, the agency is not required to offer that individual an interview.

(5) The following individuals will qualify for Veterans' Preference, once appropriate documentation is submitted and approved by the secretary:

(a) Any person who has served in the active military, military reserves, or National Guard and was discharged or released with an Honorable Discharge, Discharge Under Honorable Conditions, or a General Discharge;

(b) Any current member of the active military, military reserves, or National Guard;

(c) The spouse of a veteran who served in the active military, military reserves, or National Guard if:

1. The veteran was discharged or released with an Honorable Discharge, Discharge Under Honorable Conditions, or a General Discharge; and

2. The veteran has a service-connected disability which dis-

qualifies him/her from performing the duties of a position in the veteran's usual occupation at the time the spouse's application is filed;

(d) A parent totally or partially dependent on a person who has served in the active military, military reserves, or National Guard and who:

1. Lost his or her life under honorable conditions while on active duty or active duty for training purposes; or

2. Became permanently and totally disabled as a result of a disability sustained during such service; and

(e) The surviving spouse of a person who has served in the active military, military reserves, or National Guard who was discharged or released with an Honorable Discharge, Discharge Under Honorable Conditions, or a General Discharge.

1. The surviving spouse is entitled to Veterans' Preference until the date of remarriage.

2. The surviving spouse is not entitled to Veterans' Preference if circumstances surrounding the death of the veteran would have been cause for an Other Than Honorable Discharge.

Section 4. Preferred Skills Questions. (1) The secretary shall approve a list of preferred skills questions to assist in the determination of an applicant's qualifications and availability for a job vacancy.

(2) The appointing authority may identify preferred skills questions from the approved list of questions which relate to the specific job classification. The appointing authority may request that an applicant answer those preferred skills questions when submitting an Application for Employment. After an appointing authority has received a register, the appointing authority may consider the answers to the preferred skills questions to assist in applicant selection.

Section 5.[4.] Selection. The appointing authority shall report to the secretary the recommended candidate for appointment.

NIKKI JACKSON, Secretary

APPROVED BY AGENCY: July 18, 2008

FILED WITH LRC: July 18, 2008 at 4 p.m.

CONTACT PERSON: Daniel F. Egbers, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Daniel F. Egbers

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the requirements for certification and selection of eligibles for appointment.

(b) The necessity of this administrative regulation: This regulation is necessary for the effective and proper certification and selection of eligible applicants for appointment to state positions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.030 allows the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 13A and 18A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation currently establishes the requirements for certification and selection of eligibles for appointment.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment implements and codifies the system of Veterans' Preference in state hiring. The amendment is necessary to reward veterans and certain family members for hardship endured and to recognize the economic loss suffered while serving our Nation in uniform.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary, as there currently is no system in place which provides for Veterans' Preference in state hiring. The practice of providing veterans an additional opportunity to be interviewed and consid-

ered for state employment should be promoted and adhered to by all agencies. This amendment must be codified to comply with the spirit of KRS 18A.150, which is the statutorily mandated system of preferring veterans by awarding additional points in pre-employment tests. However, with the elimination of tests as criteria for selection, this regulation is necessary to comply with the spirit and goal of KRS 18A.150.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 18A.030(2), 18A110.(1)(b) and (7). In addition, it conforms with KRS 18A.150, which is the statutory authority currently in place for implementation of a system of Veterans' Preference.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide the guidelines by which the Personnel Cabinet shall clearly identify and supply to employing agencies and cabinets the individuals who are entitled to receive Veterans' Preference, as well as codify the process by which Veterans' Preference will be implemented in state hiring. This clarifies the process by which KRS 18A.150 will be effectuated.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Veteran applicants for state employment, the Personnel Cabinet and all Executive Branch agencies are affected by this amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Veteran applicants are required to submit documentation which verifies their veteran status. The Personnel Cabinet is responsible for notifying the appointing authority of an individual who is entitled to Veterans' Preference, and shall indicate this qualification on the register certificate. Employing agencies are required to then offer an interview to a set number of individuals who are entitled to receive Veterans' Preference.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to each of the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It is proper and fitting that the Commonwealth of Kentucky assist those who forfeited their career opportunities and suffered economic loss while providing military service. Kentucky will be encouraging the practice of hiring veterans and employing veterans in the state workforce, which is beneficial for the Commonwealth as well as the individual veterans.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs. However, if any costs are associated with this amendment, the costs will be born by the Personnel Cabinet.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation, as amended, is not anticipated to generate any new or additional fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? Tiering does not apply because all classes are treated the same under this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with employees covered under KRS Chapter 18A.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030 (2), 18A.110 (1)(b) and (7), and 18A.150.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the Veterans' Preference program.

(d) How much will it cost to administer this program for subsequent years? There is no estimated cost in the administration of the Veterans Preference program.

**STATEMENT OF EMERGENCY  
200 KAR 5:390E**

This emergency administrative regulation is being promulgated in order to provide Kentucky taxpayers the forms and information necessary to comply with Kentucky tax laws. This administrative regulation must be filed as soon as possible in order to provide administrative guidance to vendors of the requirement to register for a sales and use tax number in order to obtain a contract to supply goods and services to the Commonwealth as required by 2008 Ky Acts ch. 43, Sec. 1. An ordinary regulation is not sufficient because vendors and other related parties need this information in order to submit the proper information with bid documents to comply with the July 15, 2008 effective date of the legislation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor  
JONATHAN MILLER, Secretary

**FINANCE AND ADMINISTRATION CABINET  
Office of the Secretary  
(New Emergency Administrative Regulation)**

**200 KAR 5:390E. Registration to collect Kentucky sales and use tax.**

RELATES TO: 2008 Ky Acts. ch. 43 Sec. 1, KRS Chapter 139  
STATUTORY AUTHORITY: 2008 Ky Acts. ch. 43 Sec. 1

EFFECTIVE DATE: July 17, 2008

NECESSITY, FUNCTION, AND CONFORMITY: 2008 Ky. Acts. Ch. 43 Sec. 1 requires a person contracting with the Commonwealth to register with the Department of Revenue to collect and remit the sales and use tax imposed by KRS Chapter 139, and authorizes the secretary of the Finance and Administration Cabinet to promulgate administrative regulations to establish the procedure for ensuring compliance with this requirement. This administrative regulation establishes the procedure for ensuring compliance.

Section 1. (1) Any person awarded a contract with the Commonwealth to provide goods or services subject to sales and use tax pursuant to KRS 139.200 shall submit to the contracting agency:

(a) A copy of Form 51A101 Kentucky Sales and Use Tax Permit, which is incorporated by reference in 103 KAR 3:020, for the person and each of its affiliates if they are registered with the Department of Revenue to collect and remit the sales and use tax imposed by KRS Chapter 139; or

(b) Form 10A100, Kentucky Tax Registration application, which is incorporated by reference in 103 KAR 3:010, for the person and each of its affiliates, if not registered; and

(c) Form 10A105, State Vendor Eligibility Request Form for the person and each of its affiliates.

(2) The time frame for submission of the documentation required in subsection 1 of this section shall be set by the contracting agency in the bid documents.

(3) If a vendor is not registered but an application for registration is made, the Commonwealth may grant a conditional award of contract while the application is being processed.

(4) The vendor and each of its affiliates shall remain registered for the duration of any contract awarded.

Section 2. Failure to submit the required documentation or to remain registered and in compliance with the sales and use tax filing and remittance requirements of KRS 139.540 and 139.550 throughout the duration of the contract shall constitute a material breach of the contract and the contract may be terminated.

Section 3. Incorporation by Reference. (1) Form 10A105, "State Vendor Eligibility Request Form", July 2008, is incorporated by reference.

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

JONATHAN MILLER, Secretary

APPROVED BY AGENCY: July 15, 2008

FILED WITH LRC: July 17, 2008 at 3 p.m.

CONTACT PERSON: Angela C. Robinson, Staff Assistant, Finance and Administration Cabinet, Room 093 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-8649, fax (502) 564-3894.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Angela C. Robinson, (502) 564-8649

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides guidance for the registration process required by HB 609 enacted during the 2008 General Assembly.

(b) The necessity of this administrative regulation: To ensure compliance with HB609 and to inform possible vendors of the requirement to register for a sales and use tax number in order to obtain a contract to supply goods and services to the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new regulation provides additional guidance on the forms that must be submitted with the bid documents in order to be considered for state contract awards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the author-

izing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Only the businesses having contracts or submitting bids to provide goods and services to the Commonwealth are affected. If they are not registered for sales and use tax, they will need to complete an application to obtain a sales and use tax number for the person applying as well as all affiliates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Complete registration application if they are not already registered, file sales and use tax returns and complete a list of their affiliates to verify they are registered as well.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Unknown. The cost will vary depending on the entity's size and current registration status. If they are already registered, there is nothing in addition to what they are currently doing, i.e. filing sales and use tax returns. If the person or their affiliates are not registered, the entity may incur some costs for a preparation of the subsequent sales and use tax returns.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Consistency and timeliness in compliance with the statutes.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: \$2,000 to create forms and code changes to existing registration system.

(b) On a continuing basis: Minimal

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Revenue agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This administrative regulation does not require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because the requirements of this regulation apply to every person who participates in the bidding process for state contracts for goods and services.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet and the Department of Revenue.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2008 Ky Acts ch. 43, Sec. 1 and KRS Chapter 139.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Estimated to generate an additional \$500,000 to general fund.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Un-

known, but estimated to be \$500,000 annually, based on similar regulations in other states.

(c) How much will it cost to administer this program for the first year? No increase over current funding levels.

(d) How much will it cost to administer this program for subsequent years? No increase over current funding levels.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### STATEMENT OF EMERGENCY 307 KAR 1:050E

The Cabinet for Economic Development is promulgating this administrative regulation to meet its obligations pursuant to HB 611 of the 2008 Regular Session of the General Assembly codified at KRS 154.30. The Act became effective July 15, 2008. KRS 154.30 states that the Kentucky Economic Development Finance Authority (the Authority) shall establish standards and requirements for the application process through promulgation of administrative regulations in accordance with KRS Chapter 13A. It is crucial that the Commonwealth put this process in place immediately because decisions are being made by potential applicants for these incentives that could impact the Commonwealth. Other states are competing for these applicants and time is of the essence in making the application process available. An ordinary administrative regulation is not sufficient because it will delay the processing of applications and awarding of incentives. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVE BESHEAR, Governor

JOHN HINDMAN, Secretary

#### CABINET FOR ECONOMIC DEVELOPMENT Kentucky Economic Development Finance Authority (New Emergency Administrative Regulation)

#### 307 KAR 1:050E. Application process for Tax Increment Financing.

RELATES TO: KRS Chapter 154, Subchapter 30 and KRS 154.20-033.

STATUTORY AUTHORITY: KRS 154.30-030(2)(b) and KRS 154.20-033.

EFFECTIVE DATE: July 21, 2008

NECESSITY, FUNCTION AND CONFORMITY: KRS 154.30-030 requires the Kentucky Economic Development Finance Authority to establish additional standards and requirements for the application process for Tax Increment Financing. KRS 154.20-033 authorizes the Kentucky Economic Development Finance Authority to impose fees in conjunction with the application process. This administrative regulation clarifies the application process, identifies the information required for purposes of application, and clarifies the steps that shall be taken by the authority and the applicant between preliminary approval and final approval.

Section 1. Definitions. (1) "Agency" is defined by KRS 154.30-010(2).

(2) "Agreement" means a "tax incentive agreement" as defined by KRS 154.30-010(29).

(3) "Application" means the form "Application for Tax Increment Financing (TIF)".

(4) "Authority" is defined by KRS 154.30-010(5).

(5) "Capital Investment" is defined by KRS 154.30-010(6).

(6) "City" is defined by KRS 154.30-010.

(7) "County" is defined by KRS 154.30-010(10).

(8) "Development area" is defined by KRS 154.30-010(13).

(9) "Incentives" means the state tax revenues as defined in KRS 154.30-010(28) that may be pledged by the authority under

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the specific tax increment financing participation program for which an applicant has applied.

(10) "Project" is defined by KRS 154.30-010(25).

**Section 2. Application.** A city, county or agency applying for incentives pursuant to KRS 154.30 shall submit an application to the Department of Financial Incentives within the Cabinet for Economic Development at the Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601. Applications may be submitted by electronic mail, by mail or by hand delivery. If an application is submitted by electronic mail, the signature pages relevant to that application must be submitted by mail in the original hard copy. The authority shall not accept electronic signatures.

**Section 3. Local Certification.** The governing body of the city, county, or agency submitting the application shall include with its submission to the authority the determinations, findings, and data required by KRS 65.7049(3) and (4).

**Section 4. Application Supplements.** In addition to the information required by KRS 154.30-030, the applicant shall provide:

(1) All information required by the "Application for Tax Increment Financing Program (TIF)", which is incorporated herein by reference.

(2) An application fee in the amount of \$1,000.

(3) Copies of any grant or loan applications, agreements, contracts or other documentation related to financing of the project shall be provided upon request of the authority.

**Section 5. Preliminary Approval.** If, based upon the application itself and other information submitted to or requested by the authority, it appears that the minimum requirements for any of the Tax Increment Financing Programs involving state participation are likely to be met, the staff shall make a recommendation to the authority and submit the project for preliminary approval. If the authority staff cannot confirm the minimum requirements, a letter shall be sent to the applicant identifying the specific requirements which have not been met.

**Section 6. Use and Costs of Contract Consultant.** (1) If the project receives preliminary approval, and state participation is requested under KRS 154.30-050 or 154.30-060, the authority shall contract with an outside consultant with the expertise required to analyze the project pursuant to KRS 154.30-030. If the application requests state participation under 154.30-040, the authority may contract with an outside consultant to analyze the project if the authority determines that additional information is necessary.

(2) If the application requests state participation under KRS 154.30-050 or 154.30-060, the authority shall consult with the Office of State Budget Director, the contract consultant, and the Department of Revenue and develop an appropriate analysis that will meet the requirements of KRS 154.30-030.

(3) Notwithstanding the statutory section under which state participation is requested, if the authority seeks analysis of a contract consultant:

(a) The contract consultant shall provide an estimate of the cost of the analysis;

(b) The applicant shall pay to the authority the total estimated cost of the analysis in advance and shall execute a consultant payment agreement; and

(c) The authority shall pay the contract consultant from the consultant funds paid by the applicant to the authority in accordance with the terms and conditions of the consultant payment agreement.

(6) Any balance of funds remaining after completion and delivery of the contract consultant's analysis to the authority shall be returned to the applicant.

**Section 7. Memorandum of Agreement.** (1) If the authority grants preliminary approval of the application, it shall enter into a Memorandum of Agreement with the applicant which shall include, but shall not be limited to, the following:

(2) Identification of the footprint of the project. The total maximum incentive amount preliminarily approved by the authority.

(3) Conditions for final approval, including:

(a) Verification of representations made in the application and other documents submitted in association with the application; and

(b) Payment for all professional services that may result from the application including legal fees and expenses of counsel to the authority pursuant to KRS 154.20-033.

(4) A date by which all statutory and regulatory requirements for final approval shall have been met and a schedule for periodic reporting at the discretion of the authority.

(5) Terms and standards for amendment of the Memorandum of Agreement.

**Section 8. Information Sharing.** (1) The authority may seek comments and recommendations from the Office of the State Budget Director and the Department of Revenue.

(2) Information provided to the authority in conjunction with the application may be shared with the Office of State Budget Director, Department of Revenue and any affected local jurisdictions as well as appropriate experts or contract consultants, and those agencies, experts or contract consultants shall maintain the confidentiality of the information provided to the extent that the information is exempt from disclosure under the Kentucky Open Records Act, KRS 61.878.

**Section 9. Final Approval.** Upon final approval of a project by the authority, the authority and the agency shall enter into an agreement pursuant to KRS 154.30-070.

**Section 10. Payment of Administrative Fees.** (1) Upon final approval and execution of the tax incentive agreement required by KRS 154.30-070, the applicant shall remit to the authority an administrative fee equal to 0.25% of the incentives authorized in the tax incentive agreement, not to exceed \$50,000. This administrative fee is exclusive of any contract consultant fees or legal fees which may be due.

(2) The applicant shall not be eligible for incentives until the administrative fee, any consultant payments and all legal fees and expenses are paid in full.

**Section 11. Incorporation by Reference.** (1) Application for Tax Increment Financing (TIF)", July 2008, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Economic Development, Department of Financial Incentives, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky Monday through Friday, 8 a.m. to 4:30 p.m.

JEAN HALE, Chairman

JOHN E. HINDMAN, Secretary

APPROVED BY AGENCY: July 21, 2008

FILED WITH LRC: July 21, 2008 at 4 p.m.

CONTACT PERSON: Catherine C. Staib, Assistant General Counsel, Cabinet for Economic Development, Old Capital Annex, 300 West Broadway, Frankfort, Kentucky 40601, phone (502) 564-7670, fax (502) 564-1535.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Catherine C. Staib,

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides clarification of the application process and the applicable steps for preliminary and final approval of Tax Increment Financing as required by KRS 154.30-030.

(b) The necessity of this administrative regulation: This regulation will provide guidance for those applying for approval of Tax Increment Financing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 154.30-030 directs the Kentucky Economic Development Finance Authority (the Authority) to promulgate a regulation for this purpose.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation

is required by statute and will streamline the application process.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Cities, counties and other eligible agencies considering Tax Increment Financing as a source of funding development in the Commonwealth will have clear instructions for applying for applicable state incentives.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation sets forth the application and fee requirements and sets forth supplemental information that will be required as part of the application. Therefore, the applicant will have to follow the steps of the application process, provide the supplemental documentation required, and pay the fee in order to qualify for submission to the Authority for consideration of approval.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is an application fee of \$1,000 and an administrative fee for projects that receive final approval that will vary based on the size of the project. The fee is 0.25% of the incentives awarded not to exceed \$50,000. Also, expert or contract consultant analysis of the proposed project may be necessary and costs of any contract consultant are to be paid by the applicant pursuant to KRS 154.30.030 as well as legal fees and expenses.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If the applicant project is approved, the incentive amount approved will vary depending on investment in the Commonwealth and tax revenue generated in the development area, but the inducements awarded will likely be significant relative to the size of the project.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The Cabinet has developed forms and processes and will be training existing personnel to administer the new program generally. At this time the implementation alone requires significant personnel time, but no cash expense.

(b) On a continuing basis: There will be administrative cost related to processing of the application for inducements and monitoring of the projects after they are approved to confirm continuing eligibility under the program, but the cost is unknown at this time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The application and administrative fee will provide some financial support, but general administration will have to be covered by existing operating funds from the general fund budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Yes. See explanation in (4)(b) above.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes. Please see (4)(b).

(9) TIERING: Is tiering applied? Tiering is used to the extent that the amount of the administrative fee is related to the amount of incentives awarded to the applicant. The fee is a percentage of total incentive awarded, so that smaller projects will pay less than larger ones.

#### FISCAL NOTE ON STATE OF LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire department, or school districts) will be impacted by this administrative regulation? The local government will be forfeiting some of its own tax base as well as state tax base, but will only be waiving new revenues it would not have had generated but for the development.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS Chapter 154.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Unknown

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Unknown

(c) How much will it cost to administer this program for the first year? Cost will depend on the number of applications and complexity of projects submitted.

(d) How much will it cost to administer this program for subsequent years? Cost will depend on the number of applications and complexity of projects submitted.

#### STATEMENT OF EMERGENCY 806 KAR 2:092E

This emergency administrative regulation is necessary to implement the provisions of HB 524, Section 7 enacted during the 2008 Regular Session and codified at KRS 91A.0810. The legislation requires insurers to notify current policyholders before December 31, 2008 of their rights under HB 524. Additionally, the legislation requires insurers to disclose local government taxes on renewal certificates or billings effective December 31, 2008. Due to the statutory deadline and the need for insurance companies to make changes to their administrative processes in order to comply with the legislation in a timely manner, the text for the notice and the process for providing future disclosure of local government taxes needs to be established through an emergency administrative regulation as an ordinary administrative regulation could not be effective prior to the statutory deadline. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on August 14, 2008. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor  
ROBERT D. VANCE, Secretary  
SHARON P. CLARK, Commissioner

#### PUBLIC PROTECTION CABINET Department of Insurance Consumer Protection and Education Division (New Emergency Administrative Regulation)

#### 806 KAR 2:092E. Disclosure of local government taxes.

RELATES TO: KRS 91A.080, 91A.0810, 304.3

STATUTORY AUTHORITY: KRS 91A.0810(2)

EFFECTIVE DATE: August 14, 2008

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 91A.0810(2) requires an insurance company to notify

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each current policyholder of their rights regarding payment of local government taxes and further requires the Kentucky Office of Insurance to promulgate an administrative regulation setting forth the text of that notice. This administrative regulation prescribes the text to be used by insurance companies when notifying their current policyholders of the payment for local government taxes and the process for appealing a payment. This administrative regulation also sets minimum standards for the future disclosure of local government taxes to policyholders.

Section 1. Definitions. (1) "Collection fee" means the fee established in KRS 91A.080(4).

(2) "Insurance company" means an entity holding a certificate of authority in accordance with KRS 304.3.

(3) "Local government tax" or "tax" means the license fee or tax imposed by a local government in accordance with KRS 91A.080 and does not include the collection fee.

Section 2. Notice to Current Policyholders. (1) Before December 31, 2008, an insurance company shall provide each policyholder who has a policy in effect on July 15, 2008, with a one (1) time notice that states, "Your insurance premium may be subject to a license fee or tax imposed by your local government. The amount of the fee or tax is determined by the local government where the insured risk is located. The tax and any collection fee, if included in the charges to you, will be shown on all future renewal certificates or premium billings for your policy. If you believe that you have been erroneously charged or have been overcharged the tax, you may contact us for information on how to request a refund or credit for the tax paid."

(2) If a policyholder is insured under more than one (1) policy with an insurance company, the insurance company may send one (1) notice to the policyholder to satisfy the requirements of subsection one (1) of this section.

Section 3. Disclosure of Local Government Tax. (1) On and after December 31, 2008, an insurance company shall disclose to the policyholder the amount of local government tax being charged to the policyholder and the taxing jurisdiction to which the tax is due.

(2) Disclosure of a local government tax shall not be required if the insurance company does not charge the tax to the policyholder.

(3) The disclosure shall:

(a) Itemize:

1. The amount of tax and any collection fee charged to the policyholder for each taxing jurisdiction; and

2. The name or abbreviation clearly identifying each corresponding taxing jurisdiction to which the tax is due; and

(b) Be provided to the policyholder:

1. On the renewal certificate upon renewal of the policy; or

2. On the billing for each period for which premium or additional premium is charged to a policyholder by the insurance company.

(4)(a) If local government tax is owed to multiple taxing jurisdictions, the disclosure required in subsection (3) of this section shall list separately each taxing jurisdiction to which tax is owed.

(b) If a credit of a city tax is applied to a county tax pursuant to KRS 91A.080(12), and the result is that no tax is owed to the county, the disclosure may include the county in the itemization of taxing jurisdictions required in subsection (3) of this section.

(5) If a collection fee is included in the amount charged to the policyholder, the disclosure shall state that the amount includes the tax and a collection fee.

(6)(a) An insurance company may provide the disclosure on a notice separate from either the renewal certificate or billing if providing the disclosure on the renewal certificate or billing would cause the disclosure to be illegible due to type size or other space considerations.

(b) If the disclosure is provided on a separate notice, the insurance company shall provide the disclosure to the policyholder at the same time and in the same manner as the insurance company provides the renewal certificate or billing.

SHARON P. CLARK, Commissioner  
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: August 8, 2008

FILED WITH LRC: August 14, 2008 at 4 p.m.

CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the text to be used by insurance companies when notifying their current policyholders of the payment for local government taxes and the process for appealing a payment. This administrative regulation also sets minimum standards for the future disclosure of local government taxes to policyholders.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement HB 524, enacted during the 2008 Regular Session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 91A.0810(2) requires the Office of Insurance to promulgate the text of a one-time disclosure to policyholders regarding payment of a local government tax and the policyholder's rights under 08 RS HB 524. This administrative regulation establishes the text for that disclosure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the text that insurers must provide to each current policyholder in order to comply with KRS 91A.0810(2). Additionally, it sets forth the minimum standards for compliance with future disclosure of local government taxes as required by KRS 91A.0810(1).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 1,409 insurance companies that hold a certificate of authority in Kentucky and are subject to local government taxes.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be required to provide a notice to current policyholders, as set forth in this administrative regulation, explaining that premiums include charges for local government taxes and providing brief instructions on the process if a policyholder disagrees with the tax charged. Additionally, regulated entities will be required to comply with the minimum standards for future disclosure of local government taxes to policyholders.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department requested information regarding the cost impact of implementing this regulation from various interested parties. While all who responded agreed that on-going costs will be minimal, responses regarding initial costs were wide-ranging from minimal to significant, depending on the ease at which an insurer's automated billing or renewal system can be amended.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, regulated entities will provide their policyholders with important information about local government taxes which is intended to aid in the proper collection and remittance of taxes to local governments. Additionally, regulated entities will be able to comply with the provisions of 08 RS HB 524 in an efficient manner.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: The cost will be minimal.

(b) On a continuing basis: There should be no additional cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There will be no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies holding a certificate of authority in Kentucky and subject to local government taxes.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 91A.0810.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### STATEMENT OF EMERGENCY 806 KAR 15:080E

This emergency administrative regulation is necessary to implement the provisions of HB 179, enacted during the 2008 Regular Session and codified at KRS 304.15-175. The legislation requires insurers to notify the Department of Insurance within thirty (30) days after completion of all policy payments for a life insurance policy. Because the HB 179 becomes effective on July 15, 2008, and there is no implementation period within the legislation, an insurer could be required to provide notice of a paid-up policy by August 15, 2008. Due to this short implementation timeframe, the process for submitting notifications needs to be established through an emergency administrative regulation as an ordinary

administrative regulation could not be effective prior to the first notification period. The law also requires the Department of Insurance to maintain the notices in a manner to facilitate responses to policyholder inquiries. Pursuant to 806 KAR 3:210, disclosure of the information within the notice is limited as it is nonpublic personal information. Therefore, in order to ensure that an individual is not harmed by the inadvertent release of nonpublic personal information, a process for submitting and responding to requests for information on paid-up policies needs to be established. Because the law becomes effective July 15, 2008, and because an ordinary administrative regulation could not be effective by that time, the process for submitting and responding to policyholder inquiries needs to be established by an emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on August 14, 2008. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor  
ROBERT D. VANCE, Secretary  
SHARON P. CLARK, Commissioner

#### PUBLIC PROTECTION CABINET Department of Insurance Life Insurance Division (New Emergency Administrative Regulation)

#### 806 KAR 15:080E. Paid-up life insurance policies.

RELATES TO: KRS 304.15-175

STATUTORY AUTHORITY: KRS 304.2-110(1)

EFFECTIVE: August 14, 2008

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance headed by a Commissioner. KRS 304.2-110(1) authorizes the Executive Director of the Office of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010 through 304.99-152. This administrative regulation establishes standards for the submission of a notice of a paid-up life insurance policy by an insurer to the Department of Insurance. This administrative regulation also establishes the process for requesting information regarding a paid-up life insurance policy.

Section 1. Definitions. (1) "Commissioner" means the commissioner of the Department of Insurance.

(2) "Department" means the Department of Insurance.

(3) "Paid-up policy" means a whole life insurance policy under which all premiums have already been paid, with no further premium payment due, including a life insurance policy where the policy is in the reduced paid-up nonforfeiture option.

(4) "Universal life insurance" means a life insurance policy in which separately identified interest credits, other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts, and mortality and expense charges are made to the policy;

(5) "Variable life insurance" means a life insurance policy under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

Section 2. Exemptions. This administrative regulation shall not apply to:

- (1) Annuities;
- (2) Credit life insurance;
- (3) Group life insurance;
- (4) Term life insurance;
- (5) Universal life insurance; and
- (6) Variable life insurance.

Section 3. Timeframe for Submission of Notice. Beginning August 30, 2008, and monthly thereafter, insurers shall provide notice to the Department, in accordance with Sections 4 and 5 of



this administrative regulation, of all paid-up policies issued in Kentucky within thirty (30) days of completion of all policy payments.

Section 4. Methods of Filing. (1) Notice of a paid-up policy shall be submitted by an insurer to the Department electronically through:

(a) eServices via the department's Web site, <http://insurance.ky.gov>; or

(b) A file transfer protocol, incorporating the information included in Section 5 of this administrative regulation.

(2) To utilize the option of submitting notice through a file transfer protocol, an insurer shall send a written letter to the department requesting to initiate this service.

Section 5. Information required on the Notice. (1) The following information regarding a paid-up policy shall be submitted to the department by an insurer:

(a) The insurer's identification number assigned by the National Association of Insurance Commissioners;

(b) The name of the policyholder;

(c) The last known address of the policyholder;

(d) The policy number;

(e) The date the policy was paid up;

(f) The name of the insured; and

(g) The insured's date of birth.

(2) The following information regarding a paid-up policy may be submitted to the department by an insurer:

(a) The policyholder's Social Security number;

(b) The policyholder's date of birth;

(c) The name of all of the beneficiaries named; and

(d) The relationship of the beneficiary to the policyholder.

Section 6. Request of Policy Information Requirements. (1) A request for information on a paid-up policy shall be made by submitting a Request for Paid-Up Policy Information, PUL-1, in writing to the Department. The request shall be made by one of the following individuals:

(a) The policyholder;

(b) The beneficiary; or

(c) An individual with legal authority to obtain insurance-related information on the insured.

(2) The written request shall include the following documentation:

(a) If the insured is deceased,

1. A certified copy of the death certificate for the insured; and

2.a. Documentation identifying the requestor as a policyholder or beneficiary under the paid-up policy; or

b. A court order permitting the requestor to obtain insurance-related information on the insured.

(b) If the insured is not deceased,

1. Documentation identifying the requestor as the policyholder;

or

2. A copy of the power of attorney allowing the requestor to obtain insurance-related information regarding the insured.

Section 7. Incorporated by Reference. (1) "Request for Paid-Up Policy Information, PUL-1", 7/2008, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the Department's internet Web site at: <http://insurance.ky.gov>

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: August 11, 2008

FILED WITH LRC: August 14, 2008 at 4 p.m.

CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for the submission of a notice of a paid-up life insurance policy by an insurer to the Department of Insurance. This administrative regulation also establishes the process for requesting information regarding a paid-up life insurance policy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement HB 179, enacted during the 2008 Regular Session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes the procedure for submitting a notice of a paid-up policy to the Department, as required by 2008 RS HB 179 and establishes the procedure for requesting information about a paid-up policy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies the term, "paid-up policy", establishes an electronic method to submit notice of a paid-up policy, and includes safeguards for ensuring that only authorized individuals are able to obtain information about a paid-up policy, as this information is protected under other administrative regulations and federal law.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 520 insurers that are licensed to offer life insurance in Kentucky, and individuals wanting information about paid-up policies.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be required to submit notice of a paid-up policy to the Department of Insurance through an electronic means either through the Department's secure Web site or through a file transfer protocol. Individuals requesting information about a paid-up policy must provide documentation of a specified relationship with the insured in order to obtain otherwise private information.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): We requested that the industry provide us with information on the cost impact of this regulation. The Department of Insurance has not received a response to its request.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, individuals will be able to obtain information about misplaced or transferred life insurance policies and be able to utilize this asset. Regulated entities will be able to comply with the provisions of 2008 RS HB 179 in an efficient manner.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: The cost will be minimal.

(b) On a continuing basis: There should be no additional cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation:

tion, if new, or by the change, if it is an amendment: There will be no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies offering life insurance in Kentucky.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### STATEMENT OF EMERGENCY 806 KAR 17:540E

This emergency administrative regulation is necessary to implement the provisions of HB 406 Section XII enacted during the 2008 Regular Session. The legislation continues the Insurance Coverage Affordability and Relief to Small Employers (ICARE) Program that was originally created in the 2006-08 biennial budget bill, 2006 RS HB 380. As 2008 RS HB 406 is emergency legislation that became effective upon its signing. With the signing of 2008 RS HB 406, the previous statutory authority for the creation of the ICARE Program expired. Therefore, this administrative regulation needs to be amended to reference the new statutory authority for continuation of the ICARE Program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 15 2008. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor  
ROBERT D. VANCE, Secretary  
JOHN BURKHOLDER, Acting Commissioner

#### PUBLIC PROTECTION CABINET Department of Insurance Division of Kentucky Access (Emergency Amendment)

#### 806 KAR 17:540E. ICARE Program high-cost conditions.

RELATES TO: 2008 Ky Acts ch. 127, Part XII, secs. 1-8, 12  
[2006 Ky Acts ch. 252, Part XXIII, secs. 1-8, 13, 22]

STATUTORY AUTHORITY: KRS 304.2-110(1), 2008 Ky Acts ch. 127, Part XII, sec. 2(3)(b)[2006 Ky Acts ch. 252, Part XXIII, sec. 2(3)(b)]

EFFECTIVE DATE: July 15, 2008

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 304.2-110(1) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. 2008 Ky Acts ch. 127, Part XII, sec. 2(3)(b)[2006 Ky Acts ch. 252, Part XXIII, sec. 2(3)(b)] requires the office to establish by administrative regulation a list of high-cost conditions for the ICARE Program. This administrative regulation establishes a list of high-cost conditions representing the top twenty (20) high-cost conditions in the small group market.

Section 1. Definitions. (1) "Eligible employee" is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(3)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(3)].

(2) "High-cost condition" is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(5)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(5)].

(3) "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2008 Ky Acts ch. 127, Part XII, sec. 2(1)[2006 Ky Acts ch. 252, Part XXIII, sec. 2(1)].

Section 2. List of High-Cost Conditions. An ICARE Program high-cost condition shall:

(1) Be diagnosed or treated by a health care provider legally authorized to diagnose the condition within the past five (5) years and documented in the medical record of an eligible employee; and  
(2) Include one (1) of the following medical conditions:

(a) Anoxic brain injury, which shall be limited to anoxic brain injury associated with:

1. Drowning and nonfatal submersion; or
2. Intrauterine hypoxia and birth asphyxia;
- (b) Ascites;
- (c) Back disorder, which shall be limited to:
  1. Lumbar or Lumbosacral disc degeneration; or
  2. Lumbar disc displacement;
- (d) Brain tumor;

(e) Burn, which shall be limited to full-thickness skin loss involving ten (10) percent or more of body surface;

(f) Cancer, which shall be limited to:

1. Ewing's sarcoma;
2. Hodgkin's disease;
3. Leukemia;
4. Lymphoid leukemia;
5. Malignant neoplasm of breast;
6. Metastatic cancer;
7. Myeloid leukemia; or
8. Primary cancer;

(g) Cirrhosis of the liver;

(h) Endocrine disorder, which shall be limited to:

1. Insulin dependent diabetes mellitus; or
2. Enzyme deficiency disorder which shall be limited to inborn errors of metabolism[~~an inherited metabolic disease as established in KRS 205.560(1)(e)~~];

(i) Heart condition, which shall be limited to:

1. Acute myocardial infarction;
2. Angina pectoris;
3. Cardiac valve disorder;
4. Cardiomyopathy;
5. Congenital cardiac anomaly;

6. Coronary insufficiency;
7. Coronary occlusion;
8. Heart failure;
9. Injury to heart or lung;
10. Ischemic heart disease;
11. Pulmonary atresia;
12. Pulmonary hypertension; or
13. Status post open-heart surgery;
- (j) Hemophilia;
- (k) Hypersomnia with sleep apnea;
- (l) Lung condition, which shall be limited to:
  1. Chronic airway obstruction;
  2. Disease of the lung; or
  3. Post inflammatory pulmonary fibrosis;
- (m) Kidney condition, which shall be limited to:
  1. Chronic renal failure;
  2. End stage renal disease; or
  3. Polycystic kidney;
- (n) Morbid obesity;
- (o) Multiple sclerosis;
- (p) Organ or tissue replaced by transplant;
- (q) Psychotic disorder;
- (r) Rhabdomyolysis;
- (s) Stroke; or
- (t) Trauma, which shall be limited to:
  1. Fracture or complete lesion of cord; or
  2. Multiple trauma.

JOHN BURKHOLDER, Acting Commissioner  
ROBERT VANCE, Secretary

APPROVED BY AGENCY: July 2, 2008

FILED WITH LRC: July 15, 2008 at 4 p.m.

CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes the list of high-cost medical conditions for the ICARE Program.
  - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a list of 20 high-cost conditions that will be used to qualify an eligible small business employer for an ICARE Program health care incentive payment if the employer has an eligible employee who has been diagnosed with or treated for 1 of the high-cost conditions within 5 years.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 406, Section XII continues the ICARE Program as a pilot program for the next two fiscal years and requires the Department to establish a list of high-cost conditions for the ICARE Program. This administrative regulation establishes a list of high-cost conditions for the ICARE Program based on information received from ICARE Program participating insurers offering health benefit plans in the small group market.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the list of ICARE Program high-cost conditions.
  - (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
    - (a) How the amendment will change this existing administrative regulation: This amendment will update statutory references and agency names.
    - (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reference the appropriate statutory authority for the ICARE Program, which was re-established in HB 406, Part XII, during the 2008 Regular Session. This amendment is also necessary to update agency names as a

result of the reorganization effective with Executive Order 2008-507.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 406, Section XII continues the ICARE Program as a pilot program for the next two fiscal years and requires the Department to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will primarily provide the correct references to the statutory authority for the ICARE Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendments to this existing administrative regulation are technical in nature and should not impact the ICARE applicants, members or the health insurance agents assisting in the application process.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: These amendments are technical in nature and do not require implementation by regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): These amendments are technical in nature and will not have a cost impact.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These amendments are technical in nature and will not require specific compliance.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There should be no additional cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: If any costs arise, the budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment. There will be no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies offering life insurance in Kentucky.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 2008 Ky Acts ch. 127, Part XII, secs. 1-8, 12

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

# **STATEMENT OF EMERGENCY** **806 KAR 17:545E**

This emergency administrative regulation is necessary to implement the provisions of HB 406 Section XII enacted during the 2008 Regular Session. The legislation continues the Insurance Coverage Affordability and Relief to Small Employers (ICARE) Program that was originally created in the 2006-08 biennial budget bill, 2006 RS HB 380. As 2008 RS HB 406 is emergency legislation that became effective upon its signing. With the signing of 2008 RS HB 406, the previous statutory authority for the creation of the ICARE Program expired. Therefore, this administrative regulation needs to be amended to reference the new statutory authority for continuation of the ICARE Program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 15, 2008. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor

ROBERT D. VANCE, Secretary

JOHN BURKHOLDER, Acting Commissioner

## **PUBLIC PROTECTION CABINET** **Department of Insurance** **Division of Kentucky Access** **(Emergency Amendment)**

### **806 KAR 17:545E. ICARE Program employer eligibility, application process, and requirements.**

RELATES TO: 2008 Ky Acts ch. 127, Part XII, secs. 1-8, 12[2006 Ky Acts ch. 252, Part XXIII, secs. 1-8, 13, 22]

STATUTORY AUTHORITY: KRS 304.2-110(1), 2008 Ky Acts ch. 127, Part XII, secs. 1(2), 1(3), 2(5)[2006 Ky Acts ch. 252, Part XXIII, secs. 1(2) and 1(3), 2(5)]

EFFECTIVE DATE: July 15, 2008

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 304.2-110(1) authorizes the executive director of insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. 2008 Ky Acts ch. 127, Part XII, sec. 1(2) and (3)[2006 Ky Acts ch. 252, Part XXIII, secs. 1(2) and (3)] require the office to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2008 Ky Acts ch. 127, Part XII, sec. 2(5)[2006 Ky Acts ch. 252, Part XXIII, sec. 2(5)] requires the office

to establish guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-020(1).

(2) "Complete ICARE Program application" means the ICARE Program application, ICARE-APP-1, with all fields completed and all required attachments, including:

(a) Documentation verifying that the employer group's average annual salary is 300% of the federal poverty level or below, which may include the employer's:

1. Quarterly unemployment tax statement; or

2. Payroll register;

(b) Documentation supporting coverage of the employer group under a qualified health benefit plan;

(c) A copy of the employer's application or renewal information for coverage to the insurer;

(d) Employee ICARE Program high-cost condition certification, if applicable; and

(e) Any additional attachments, if applicable.

(3) "Department" means the Department of Insurance.

(4) "Eligible employee" is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(3)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(3)].

(5)[(4)] "Eligible employer" is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(2)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(2)].

(6)[(5)] "Federal poverty level" means a standard of income for an individual who resides in one (1) of the forty-eight (48) contiguous states which:

(a) Is issued annually by the United States Department of Health and Human Services;

(b) Is published annually in the Federal Register; and

(c) Accounts for the previous year's price increases as measured by the consumer price index.

(7)[(6)] "Full time employee" means an employee who works at least twenty-five (25) hours per week.

(8)[(7)] "Full time equivalent" means a number that equals the total hours worked per week by part time employees divided by twenty-five (25).

(9)[(8)] "Health benefit plan" is defined in KRS 304.17A-005(22).

(10)[(9)] "Health care incentive payment" means a payment as established in 2008 Ky Acts ch. 127, Part XII, secs. 2(3) and 4(1)[2006 Ky Acts ch. 252, Part XXIII, secs. 2(3) and 4(1)].

(11)[(10)] "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2008 Ky Acts ch. 127, Part XII, sec. 2(1)[2006 Ky Acts ch. 252, Part XXIII, sec. 2(1)].

(12)[(11)] "ICARE Program high-cost condition" means a high-cost condition as:

(a) Defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(5)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(5)]; and

(b) Established in 806 KAR 17:540.

(13)[(12)] "ICARE Program participating employer" means an eligible employer who is enrolled in the ICARE Program.

(14)[(13)] "ICARE Program participating insurer" is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(6)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(6)].

(15)[(14)] "ICARE Program year" means a one (1) year period of time beginning on an eligible employer's enrollment date in the ICARE Program.

(16)[(15)] "Insurer" is defined in KRS 304.17A-005(27). [(46) "Office" is defined in and KRS 304.1-050(2).]

(17) "Qualified health benefit plan" is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(8)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(8)].

Section 2. Employer Eligibility. (1) To determine the number of employees of an employer pursuant to 2008 Ky Acts ch. 127, Part

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XII, sec. 1(2)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(2)], the department[office] shall consider:

- (a) Full time employees; and
- (b) Full time equivalents rounded to the nearest whole number.

(2) The average annual salary of the employer group shall not exceed 300% of the most current federal poverty level for a family of three (3). To determine the average annual salary of the employer group pursuant to 2008 Ky Acts ch. 127, Part XII, sec. 2(4)[2006 Ky Acts ch. 252, Part XXIII, sec. 2(4)], the department[office] shall:

(a) Calculate the sum of the annual gross salaries of all eligible employees, excluding the salary of any employee:

1. With an ownership interest in the business;
2. Who is a Medicare-eligible employee;
3. Who has attained age sixty-five (65); or
4. Who does not meet eligibility requirements for participation in the employer-sponsored health benefit plan established by the employer and insurer; and

(b) Divide the sum calculated in paragraph (a) of this subsection by the total number of employees whose salaries were used in the calculation established in paragraph (a) of this subsection.

(3) An eligible employer shall pay fifty (50) percent or more of the average single premium cost of qualified health benefit plan coverage for each eligible employee.

(4) An eligible employer shall have at least one (1) eligible employee who is not an owner of the business.

**Section 3. Application for Participation in the ICARE Program.**

(1) An eligible employer who desires to participate in the ICARE Program and:

(a) Who has not provided employer-sponsored health benefit plan coverage to its employees within the previous twelve (12) months, shall submit a complete ICARE Program application within 120 days of receiving notice of approval for coverage under a qualified health benefit plan;

(b) Who currently provides employer-sponsored health benefit plan coverage to its employees under a qualified health benefit plan and has an eligible employee with a diagnosed ICARE high-cost condition, shall submit a complete ICARE Program application at any time; or

(c) Who has been terminated from the ICARE Program for any reason other than material misrepresentation or fraud, shall submit a complete ICARE Program application no earlier than sixty (60) days prior to the anniversary of the employer's initial enrollment in the ICARE Program.

(2) A Kentucky licensed agent acting on behalf of an ICARE Program participating insurer shall assist in the submission of an application for the ICARE Program by:

(a) Verifying that the employer has completed and submitted all required information to support eligibility for the ICARE Program;

(b) Completing section 3 of the ICARE Program application of the employer; and

(c) If applicable:

1. Collecting employee ICARE Program high-cost condition certifications from employees, as identified in the ICARE Program application; and

2. Protecting personal health information as established in subparagraph 1 of this paragraph pursuant to 806 KAR 3:210 through 806 KAR 3:230.

**Section 4. Application Process.** (1) Within sixty (60) days of receiving a complete ICARE Program application, the department[office] shall make a determination of the employer's eligibility for the ICARE Program and provide written or electronic notification to the employer regarding eligibility.

(2) Within sixty (60) days of receiving an incomplete ICARE Program application, the department[office] shall provide the employer with a written or electronic notification of:

(a) Ineligibility of the employer, if the application includes information which makes an employer ineligible for the ICARE Program; or

(b) Any information that is missing or incomplete.

(3) If an employer receives notification of ineligibility for the

ICARE Program, the employer may submit within thirty (30) days from the date of the notification a written request to the department[office] for reconsideration in accordance with Section 8 of this administrative regulation.

(4) Upon approval of ICARE Program eligibility by the department[office] under a program eligibility category as established in 2008 Ky Acts 127, Part XII, sec. 2(3)[2006 Ky Acts ch. 252, Part XXIII, sec. 2(3)], an eligible employer shall not be allowed to reapply to the ICARE Program under a different program eligibility category.

**Section 5. Changes in Application Information.** An ICARE Program participating employer shall provide written notification of any change in ICARE Program application information to the department[office] within thirty (30) days of the date of the change.

**Section 6. Renewal of ICARE Program Participation.** (1) At least sixty (60) days prior to the ICARE Program year renewal date, the department[office] shall send a renewal notification to an ICARE Program participating employer.

(2) At least thirty (30) days prior to the ICARE Program year renewal date, an ICARE Program participating employer who desires continued participation in the ICARE Program shall submit to the department[office]:

(a) A written request for renewal of ICARE Program participation; and

(b) Documentation to support eligibility as established in Section 2 of this administrative regulation and 2008 Ky Acts ch. 127, Part XII, secs. 1 through 8[2006 Ky Acts ch. 252, Part XXIII, secs. 1 through 8].

(3) Within thirty (30) days of receiving a request for renewal, the department[office] shall make a determination of continued eligibility for a subsequent ICARE Program year and notify the ICARE Program participating employer of the determination.

**Section 7. Termination of ICARE Program Participation.** (1) An ICARE Program participating employer shall be terminated from participation in the ICARE Program if:

(a) The department[office] determines that the employer ceases to meet an eligibility requirement as established in Section 2 of this administrative regulation or 2008 Ky Acts ch. 127, Part XII, secs. 1 through 8[2006 Ky Acts ch. 252, Part XXIII, secs. 1 through 8];

1. Upon completion of an annual review for the ICARE Program year reviewed; or

2. Upon review of a request for renewal of ICARE Program Participation;

(b) The employer group's qualified health benefit plan coverage is terminated or not renewed pursuant to 2008 Ky Acts ch. 127, Part XII, sec. 4(5)[2006 Ky Acts ch. 252, Part XXIII, sec. 4(5)];

(c) The employer or any employee of the employer group performs an act or practice that constitutes fraud or intentionally misrepresents a material fact in the ICARE Program application;

(d) The employer requests termination from the ICARE Program;

(e) The employer ceases business operations in Kentucky; or

(f) The employer fails to cooperate in an annual review as described in Section 10 of this administrative regulation.

(2) Prior to terminating an ICARE Program participating employer, the department[office] shall provide written notification to the employer, which shall include:

(a) The reason for termination as identified in subsection (1) of this section;

(b) The termination date, which shall be:

1. If terminated for fraud or misrepresentation, the date of the written notification; or

2. If terminated for a reason other than fraud or misrepresentation, no less than thirty (30) days from the date of the written notification; and

(c) Instructions for filing an appeal if dissatisfied with the termination.

**Section 8. Reconsideration Requests and Appeals.** (1) Within thirty (30) days of receiving notification of a determination of ineli-

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gibility pursuant to Section 4 or 6 of this administrative regulation or termination by the department[office] pursuant to Section 7 of this administrative regulation, an employer may request a reconsideration of the determination of ineligibility or termination in writing and shall provide the basis for reconsideration, including any new relevant information.

(2) The department[office] shall provide written notification of its determination to the employer within sixty (60) days of receipt of a request for reconsideration from an employer.

(3) Within sixty (60) days of receiving the department's[office's] determination on reconsideration, the employer may appeal by filing a written application for an administrative hearing in accordance with KRS 304.2-310.

Section 9. ICARE Program Health Care Incentive Payment. (1) If confirmation of premium payment by the ICARE Program participating employer is included in the report required by 806 KAR 17:555, Section 5(4), a health care incentive payment shall be issued to the employer for each calendar month beginning with the month of enrollment of the employer in the ICARE Program.

(2) The department[office] shall issue a health care incentive payment to an ICARE Program participating employer for each month in accordance with 2008 Ky Acts ch. 127, Part XII, sec. 4(1) [2006 Ky Acts ch. 252, Part XXIII, sec. 4(1)] for eligible employees enrolled in a qualified health benefit plan not to exceed the number of employees approved as eligible employees by the department[office] based on the employer's ICARE Program application or ICARE Program renewal.

(3) The total amount of the monthly health care incentive payment provided to an employer may vary during the ICARE Program year based upon the number of eligible employees enrolled in the qualified health benefit plan as reported by the ICARE Program participating insurer.

(4) If an ICARE Program participating employer is terminated from the ICARE Program, the employer shall not be eligible for a monthly health care incentive payment following the effective date of termination for months remaining after the termination.

(5) If an ICARE Program participating employer is terminated from the ICARE Program due to fraud or material misrepresentation, the employer shall refund to the department[office] all health care incentive payments received by the employer for the period of ineligibility determined by the department[office].

(6) Upon re-enrollment of an employer in the ICARE Program pursuant to Section 3(1)(c) of this administrative regulation, the employer shall receive a health care incentive payment amount that is equal to the health care incentive payment that the employer would have received at the time of renewal in accordance with 2008 Ky Acts ch. 127, Part XII, sec. 4(1) [2006 Ky Acts ch. 252, Part XXIII, sec. 4(1)].

Section 10. Annual Review. The department[office] may make or cause to be made an annual review of the books and records of an ICARE Program participating employer, insurer, or agent to ensure compliance with:

(1) 2008 Ky Acts ch. 127, Part XII, secs. 1 through 8 [2006 Ky Acts ch. 252, Part XXIII, secs. 1 through 8], 806 KAR 17:540 and 17:555 and this administrative regulation; and

(2) The representations made by the employer on its application for participation in the ICARE Program.

Section 11. Response to Department[Office] Inquiry. If an employer receives an inquiry from the department[office] relating to the eligible employer's participation or application in the ICARE Program, the eligible employer shall respond within fifteen (15) business days.

Section 12. Incorporation by Reference. (1) "ICARE-APP-1" 7/2008 [ICARE-APP-1", 9/2007], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department[Office] of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) Forms may also be obtained on the department[office] Web site at <http://doi.ppr.ky.gov/kentucky>.

JOHN BURKHOLDER, Acting Commissioner

ROBERT VANCE, Secretary

APPROVED BY AGENCY: July 2, 2008

FILED WITH LRC: July 15, 2008 at 4 p.m.

CONTACT PERSON: J Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application appeals process, annual review, health care incentive payment procedures, and the eligibility criteria for employers wishing to participate in the ICARE Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with 2008 RS HB 406, Part XII in creating administrative regulations to further clarify and establish the various process for the ICARE Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 406, Section XII continues the ICARE Program as a pilot program for the next two fiscal years and requires the Department to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by further establishing eligibility requirements, the ICARE Program application, application and appeal processes, annual review and payment of health care incentives.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation corrects statutory references as a result of legislation enacted during the 2008 Regular Session and agency names as a result of EO 2008-507.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reference the appropriate statutory authority for the ICARE Program, which was re-established in HB 406, Part XII, during the 2008 Regular Session. This amendment is also necessary to update agency names as a result of the reorganization effective with EO 2008-507.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 406, Section XII continues the ICARE Program as a pilot program for the next two fiscal years and requires the Department to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will primarily provide the correct references to the statutory authority for the ICARE Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendments to this existing administrative regulation are technical in nature and should not impact the ICARE applicants, members or the health insurance agents assisting in the application process.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative

regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: These amendments are technical in nature and do not require implementation by regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): These amendments are technical in nature and will not have a cost impact.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These amendments are technical in nature and will not require specific compliance.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There should be no additional cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: If any costs arise, the budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment. There will be no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies offering life insurance in Kentucky.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 2008 Ky Acts ch. 127, Part XII, secs. 1-8, 12

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### STATEMENT OF EMERGENCY 806 KAR 17:555E

This emergency administrative regulation is necessary to implement the provisions of HB 406 Section XII enacted during the 2008 Regular Session. The legislation continues the Insurance Coverage Affordability and Relief to Small Employers (ICARE) Program that was originally created in the 2006-08 biennial budget bill, 2006 RS HB 380. As 2008 RS HB 406 is emergency legislation that became effective upon its signing. With the signing of 08 RS HB 406, the previous statutory authority for the creation of the ICARE Program expired. Therefore, this administrative regulation needs to be amended to reference the new statutory authority for continuation of the ICARE Program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulation Compiler on July 15, 2008. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor  
ROBERT D. VANCE, Secretary  
JOHN BURKHOLDER, Acting Commissioner

#### PUBLIC PROTECTION CABINET Department of Insurance Division of Kentucky Access (Emergency Amendment)

#### 806 KAR 17:555E. ICARE Program requirements.

RELATES TO: KRS 304.14-120, 304.14-430-304.14-450, 304.17A-095 -304.17A-0954, 2008 Ky Acts ch. 127, Part XII, secs. 1-8, [2006 Ky Acts ch. 252, Part XXIII, secs. 1-8, 13, 22], 42 U.S.C. 1396e

STATUTORY AUTHORITY: KRS 304.2-110(1), 2008 Ky Acts ch. 127, Part XII, secs.2(5) and 8(2)[2006 Ky Acts ch. 252, Part XXIII, secs. 2(5) and 8(2)]

EFFECTIVE DATE: July 2, 2008

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. 2008 Ky Acts ch. 127, Part XII, sec. 2(5)[2006 Ky Acts ch. 252, Part XXIII, sec. 2(5)] requires the office to establish guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program. 2008 Ky Acts ch. 127, Part XII, sec. 8[2006 Ky Acts ch. 252, Part XXIII, sec. 8(1)] requires an insurer which offers a health benefit plan to disclose the availability of a health insurance purchasing program as authorized in 42 U.S.C. 1396e to eligible employer groups and the Insurance Coverage, Affordability and Relief to Small Employers Program. This administrative regulation establishes requirements for ICARE Program participating insurers, qualified health benefit plans, disclosure of information, data reporting, and annual review by the office.

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-020(1).

(2) "Basic health benefit plan" is defined in KRS 304.17A-005(4).

(3) "Consumer-driven health plan" is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(1)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(1)].

(4) "Department" means the Department of Insurance.

(5) "Eligible employee" is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(3)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(3)].

(6)[(5)] "Eligible employer" is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(2)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(2)].

(7)[(6)] "Enriched health benefit plan" means a health benefit plan which:

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(a) Is not a basic or consumer-driven health benefit plan; and  
(b) Includes all benefits established in KRS Chapter 304 subtitle 17A.

(8)[(7)] "Health benefit plan" is defined in KRS 304.17A-005(22).

(9)[(8)] "Health care incentive payment" means a payment as established in 2008 Ky Acts ch. 127, Part XII, secs. 2(3) and 4(1)[2006 Ky Acts ch. 252, Part XXIII, sec. 4(1)].

(10)[(9)] "Health risk assessment" is defined 2008 Ky Acts ch. 127, Part XII, sec. 1(4)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(4)].

(11)[(40)] "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2008 Ky Acts ch. 127, Part XII, sec. 2(1)[2006 Ky Acts ch. 252, Part XXIII, sec. 2(1)].

(12)[(44)] "ICARE Program participating insurer" is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(6)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(6)].

(13)[(12)] "ICARE Program year" means a one (1) year period of time beginning on an employer's enrollment date in the ICARE Program.

[13] "Office" is defined in 2006 Ky Acts ch. 252, Part XXIII, sec. 1(7) and KRS 304.1-050(2)].

(14) "Qualified health benefit plan" is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(8)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(8)].

(15) "Small group" is defined in KRS 304.17A-005(42).

Section 2. Health Risk Assessment. An ICARE Program participating insurer shall:

(1) Within sixty (60) days of receiving notification of a newly-enrolled ICARE Program participating employer by the department[office], conduct a health risk assessment as established in 2008 Ky Acts ch. 127, Part XII, sec. 3(4)[2006 Ky Acts ch. 252, Part XXIII, sec. 3(4)] for each eligible employee of the employer; and

(2) Within sixty (60) days of conducting a health risk assessment as established in subsection (1) of this section, and pursuant to 2008 Ky Acts ch. 127, Part XII, sec. 3(4)[2006 Ky Acts ch. 252, Part XXIII, sec. 3(4)], offer the following:

- (a) A wellness program;
- (b) Case management services; and
- (c) Disease management services.

Section 3. Qualified Health Benefit Plans. (1) All health benefit plans approved by the department[office] for use in the small group or employer-organized association market shall be deemed qualified health benefit plans.

(2) If an ICARE Program participating insurer develops a new health benefit plan or amends a previously approved health benefit plan to meet the requirements of 2008 Ky Acts ch. 127, Part XII, sec. 3(2) and (4)[2006 Ky Acts ch. 252, Part XXIII, secs. 3(2) and 3(4)], the insurer shall submit for approval by the department [office], a:

- (a) Form filing for each new or amended health benefit plan in accordance with KRS 304.14-120(2), 304.14-430 through 304.14-450, and 806 KAR 14:007; and
- (b) Rate filing for each new or amended health benefit plan in accordance with KRS 304.17A-095, 304.17A-0952, 304.17A-0954 and 806 KAR 17:150, as applicable.

Section 4. Requirements of Disclosure. Pursuant to 2008 Ky Acts ch. 127, Part XII, sec. 8(1)[2006 Ky Acts ch. 252, Part XXIII, sec. 8(4)], a disclosure shall:

(1) Be distributed to an eligible employer by an insurer in written or electronic format;

(2) Include information relating to availability of the:

(a) Health Insurance Premium Payment (HIPP) Program by stating the following: "The Health Insurance Premium Payment (HIPP) Program is administered by the Department for Medicaid Services and pays for the cost of private health insurance premiums. The Program reimburses individuals or employers for private health insurance payments for individuals who are eligible for Medicaid when it is cost effective. For more information, or to see if you are eligible, contact the Department for Medicaid Services, HIPP

Program, 275 East Main Street, Frankfort, Kentucky 40621."; and  
(b) ICARE Program, which shall include:

- 1. Information relating to an eligible employer and employee;
  - 2. Amount of initial health care incentive payment and incremental reduction in rates pursuant to 2008 Ky Acts ch. 127, Part XII, sec. 4(1)[2006 Ky Acts ch. 252, Part XXIII, sec. 4(1)];
  - 3. Limited enrollment of eligible employers under the ICARE Program; and
  - 4. Department[Office] Web site and toll-free telephone number of the ICARE Program; and
- (3) Be submitted annually to the department[office] for review.

Section 5. ICARE Program Data Reporting Requirements.  
(1)(a) An ICARE Program participating insurer shall designate a contact person to respond to inquiries of the office relating to the ICARE Program and provide to the office the contact person's:

- 1. Name;
  - 2. Telephone and fax numbers; and
  - 3. Electronic mail address; and
- (b) If the information requested in paragraph (a) of this subsection is changed, the insurer shall notify the department[office] within fifteen (15) days of the date of the change.

(2) No later than the 15th day of each month, the department[office] shall report electronically to the designated contact person of an ICARE Program participating insurer as established in subsection (1) of this section, the following information for each newly enrolled and terminated ICARE Program participating employer:

- (a) The ICARE Program identification number;
  - (b) Name of employer group; and
  - (c) The ICARE Program year effective date.
- (3) Each ICARE Program participating insurer shall collect the following information monthly for each ICARE Program participating employer:
- (a) The ICARE Program identification number;
  - (b) Name of employer group;
  - (c) Name of the qualified health benefit plan covering eligible employees;
  - (d) Month of coverage;
  - (e) Average monthly premium of each eligible employee;
  - (f) Number of eligible employees covered under the qualified health benefit plan; and
  - (g) Termination date, if applicable.

(4) No later than the 20th day of each month, an ICARE Program participating insurer shall report to the department[office] information identified in subsection (3) of this section in a format as established in the form, ICARE Report-1.

(5) For the calendar year ending December 31, 2007, and annually thereafter, an ICARE Program participating insurer shall submit to the department[office], a report of the average annual premium of each ICARE Program participating employer. The annual report shall:

- (a) Include for each ICARE Program participating employer:
  - 1. ICARE Program identification number;
  - 2. Name of the employer group; and
  - 3. Average annual premium paid; and
- (b) Be submitted in a format as established in the form, ICARE Report-1:
  - 1. No later than February 1, for the previous calendar year; and
  - 2. In an electronic or written format.

Section 6. Annual Department[Office] Review of ICARE Books and Records. The office may make or cause to be made an annual review of the books and records of an ICARE Program participating insurer or agent to ensure compliance with:

- (1) 2008 Ky Acts ch. 127, Part XII, secs. 1 through 8[2006 Ky Acts ch. 252, Part XXIII, secs. 1 through 8], 806 KAR 17:540, 806 KAR 17:545 and this administrative regulation; and
- (2) The representations made by the employer on its application for participation in the ICARE Program.

Section 7. Incorporation by Reference. (1) "ICARE Report-1", 7/2008[ICARE Report-1, 12/2006], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, sub-



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ject to applicable copyright law, at the Kentucky Department [Office] of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) Forms may also be obtained on the department [office] Web site at <http://doi.ppr.ky.gov/kentucky/>.

JOHN BURKHOLDER, Acting Commissioner  
ROBERT VANCE, Secretary

APPROVED BY AGENCY: July 2, 2008

FILED WITH LRC: July 15, 2008 at 4 p.m.

CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements of insurers participating in the ICARE Program, qualified health benefit plans, the disclosure relating to the Health Insurance Premium Payment (HIPP) Program and ICARE Program, data reporting, and annual review the Department of Insurance. Additionally, this administrative regulation establishes the form to be sued by insurers for monthly and annual reporting.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements of ICARE Program participating insurers, a process for designation of qualified health benefit plans, the manner and content of required HIPP and ICARE Program disclosures, the form and content of monthly and annual reports and the annual review by the Department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 406, Section XII continues the ICARE Program as a pilot program for the next two fiscal years and requires the Department to establish guidelines for determination of preference for employer groups based upon federal poverty levels, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements and administrative guidelines for the ICARE Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by defines terms and establishes standards for the manner and content of a disclosure of the availability of the HIPP program. Additionally, this administrative regulation establishes the requirements for qualified health benefit plans, data reporting, ICARE Program participating insurers and annual review.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation corrects statutory references as a result of legislation enacted during the 2008 Regular Session and agency names as a result of EO 2008-507.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reference the appropriate statutory authority for the ICARE Program, which was re-established in HB 406, Part XII, during the 2008 Regular Session. This amendment is also necessary to update agency names as a result of the reorganization effective with EO 2008-507.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 406, Section XII continues the ICARE Program as a pilot program for the next two fiscal years and requires the Department to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. This administrative regulation establishes the

application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will primarily provide the correct references to the statutory authority for the ICARE Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendments to this existing administrative regulation are technical in nature and should not impact the ICARE applicants, members or the health insurance agents assisting in the application process.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: These amendments are technical in nature and do not require implementation by regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): These amendments are technical in nature and will not have a cost impact.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These amendments are technical in nature and will not require specific compliance.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There should be no additional cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: If any costs arise, the budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment. There will be no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies offering life insurance in Kentucky.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 2008 Ky Acts ch. 127, Part XII, secs. 1-8, 12

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This

regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

# **STATEMENT OF EMERGENCY** **907 KAR 1:835E**

This emergency administrative regulation is promulgated to establish "Michelle P." waiver service coverage and reimbursement as approved by the Centers for Medicare and Medicaid Services (CMS). This action must be taken on an emergency basis to comply with an order issued by the Honorable Joseph M. Hood, United States District Court, Eastern District of Kentucky at Frankfort regarding the civil suit, Michelle P., by her next friend, Jim Deisenroth, et. al. v. Janie Miller, Secretary, Kentucky Cabinet for Health and Family Services, in her official capacity, et. al., Civil Action No. 02-23-JMH. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor

JANIE MILLER, Secretary

## **CABINET FOR HEALTH AND FAMILY SERVICES** **Department for Medicaid Services** **Division of Community Alternatives** **(New Emergency Administrative Regulation)**

### **907 KAR 1:835E. Michelle P. waiver services and reimbursement.**

RELATES TO: KRS 205.520(3), 205.5605, 205.5606, 205.5607, 205.635, 42 C.F.R. 440.180

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606, 42 C.F.R. 440.180, 42 U.S.C. 1396a, b, d, n  
EFFECTIVE DATE: June 17, 2008

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the coverage and reimbursement provisions for Michelle P. waiver services.

Section 1. Definitions. (1) "ADHC" means adult day health care.

(2) "ADHC center" means an adult day health care center licensed in accordance with 902 KAR 20:066.

(3) "ADHC services" means health-related services provided on a regularly-scheduled basis that ensure optimal functioning of a Michelle P. waiver recipient who does not require twenty-four (24) hour care in an institutional setting.

(4) "Advanced registered nurse practitioner" or "ARNP" means a person who acts within his or her scope of practice and is licensed in accordance with KRS 314.042.

(5) "Assessment team" means a team which:

(a) Conducts assessment or reassessment services; and

(b) Consists of:

1. Two (2) registered nurses; or

2. One (1) registered nurse and one (1) of the following:

a. A social worker;

b. A certified psychologist with autonomous functioning;

c. A licensed psychological practitioner;

d. A licensed marriage and family therapist; or

e. A licensed professional clinical counselor.

(6) "Behavioral support specialist" means an individual who has a master's degree from an accredited institution with formal graduate course work in a behavioral science and at least one (1) year of experience in behavioral programming.

(7) "Blended services" means a nonduplicative combination of Michelle P. waiver services identified in Section 7 of this administrative regulation and consumer-directed option services identified in Section 8 of this administrative regulation provided pursuant to a recipient's approved plan of care.

(8) "Budget allowance" is defined by KRS 205.5605(1).

(9) "Certified psychologist with autonomous functioning" or "licensed psychological practitioner" means a person licensed pursuant to KRS Chapter 319.

(10) "Communicable disease" means a disease that is transmitted:

(a) Through direct contact with an infected individual;

(b) Indirectly through an organism that carries disease-causing microorganisms from one (1) host to another; or

(c) Indirectly by a bacteriophage, a plasmid, or another agent that transfers genetic material from one (1) location to another.

(11) "Consumer" is defined by KRS 205.5605(2).

(12) "Consumer-directed option" or "CDO" means an option established by KRS 205.5606 within the home and community-based service waivers which allows recipients to:

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

(c) Direct the delivery of services to meet their needs.

(13) "Covered services and supports" is defined by KRS 205.5605(3).

(14) "DCBS" means the Department for Community Based Services.

(15) "Department" means the Department for Medicaid Services or its designee.

(16) "Developmental disability means a severe, chronic disability that:

(a) Is attributable to:

1. Cerebral palsy or epilepsy; or

2. Any other condition, excluding mental illness, closely related to mental retardation resulting in impairment of general intellectual functioning or adaptive behavior similar to that of an individual with mental retardation and which requires treatment or services similar to those required by persons with mental retardation;

(b) Is manifested prior to the individual's 22nd birthday;

(c) Is likely to continue indefinitely; and

(d) Results in substantial functional limitations in three (3) or more of the following areas of major life activity:

1. Self-care;

2. Understanding and use of language;

3. Learning;

4. Mobility;

5. Self-direction; or

6. Capacity for independent living.

(17) "Direct-contact staff" means an individual hired by a Michelle P. waiver provider to provide services to the recipient and who:

(a)1. Is eighteen (18) years of age or older; and

2. Has a high school diploma or GED; or

(b)1. Is twenty-one (21) years of age or older; and

2. Is able to adequately communicate with recipients and staff;

(c) Has a valid Social Security number or valid work permit if not a U.S. citizen;

(d) Can understand and carry out simple instructions;

(e) Has the ability to keep simple records; and

(f) Is managed by the provider's supervisory staff.

(18) "Electronic signature" is defined by KRS 369.102(8).

(19) "ICF-MR-DD" means an intermediate care facility for an individual with mental retardation or a developmental disability.

(20) "Home and community support services" means nonresidential and nonmedical home and community based services and supports that:

(a) Meet the consumer's needs; and

(b) Constitute a cost-effective use of funds.

(21) "Home health agency" means an agency that is:

(a) Licensed in accordance with 902 KAR 20:081, Operation and services; home health agencies; and

(b) Medicare and Medicaid certified.

(22) "Level of care determination" means a determination that an individual meets the ICF-MR-DD level of care criteria established in Section 5 of this administrative regulation.

(23) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(24) "Licensed practical nurse" or "LPN" means a person who:

(a) Meets the definition of KRS 314.011(9); and

(b) Works under the supervision of a registered nurse.

(25) "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).

(26) "Mental retardation" means an individual has:

(a) Significantly sub-average intellectual functioning;

(b) An intelligence quotient of seventy (70) or below;

(c) Concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:

1. Communication;
2. Self-care;
3. Home living;
4. Social or interpersonal skills;
5. Use of community resources;
6. Self-direction;
7. Functional academic skills;
8. Work;
9. Leisure; or
10. Health and safety; and

(d) Had an onset prior to eighteen (18) years of age.

(27) "Michelle P. recipient" means an individual who:

(a) Is a recipient as defined by KRS 205.8451(9);

(b) Meets the ICF-MR-DD level of care criteria established in Section 5 of this administrative regulation; and

(c) Meets the eligibility criteria for Michelle P. waiver services established in Section 4 of this administrative regulation.

(28) "Normal baby sitting" means general care provided to a child which includes custody, control, and supervision.

(29) "Occupational therapist" is defined by KRS 319A.010(3).

(30) "Occupational therapist assistant" is defined by KRS 319A.010(4).

(31) "Patient liability" means the financial amount an individual is required to contribute toward cost of care in order to maintain Medicaid eligibility.

(32) "Physical therapist" is defined by KRS 327.010(2).

(33) "Physical therapist assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(34) "Physician assistant" or "PA" is defined by KRS 311.840(3).

(35) "Plan of care" or "POC" means a written individualized plan developed by:

(a) A Michelle P. recipient or a Michelle P. recipient's legal representative;

(b) The case manager or support broker; and

(c) Any other person designated by the Michelle P. recipient if the Michelle P. recipient designates another person.

(36) "Plan of treatment" means a care plan used by an ADHC center.

(37) "Psychologist" is defined by KRS 319.010(8).

(38) "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(39) "Qualified Mental Retardation Professional" or "QMRP" is defined by KRS 202B.010(12).

(40) "Registered nurse" or "RN" means a person who:

(a) Meets the definition established in KRS 314.011(5); and

(b) Has one (1) year or more experience as a professional nurse.

(41) "Representative" is defined by KRS 205.5605(6).

(42) "SCL waiting list individual" means an individual on the Supports for Community Living (SCL) waiting list pursuant to 907

KAR 1:145, Section 7.

(43) "Sex crime" is defined by KRS 17.165(1).

(44) "Social worker" means a person with a bachelor's degree in social work, sociology, or a related field.

(45) "Speech-language pathologist" is defined by KRS 334A.020(3).

(46) "Supervisory staff" means an individual employed by the Michelle P. waiver provider who shall manage direct-care staff and who:

- (a)1. Is eighteen (18) years of age or older; and
2. Has a high school diploma; or
- (b)1. Is twenty-one (21) years of age or older; and
2. Has a minimum of one (1) year experience in providing services to individuals with mental retardation or developmental disability;
- (c) Is able to adequately communicate with the recipients, staff, and family members;
- (d) Has a valid Social Security number or valid work permit if not a U.S. citizen; and
- (e) Has the ability to perform required record keeping.

(47) "Support broker" means an individual chosen by a consumer from an agency designated by the department to:

(a) Provide training, technical assistance, and support to a consumer; and

(b) Assist a consumer in any other aspects of CDO.

(48) "Support spending plan" means a plan for a consumer that identifies the:

- (a) CDO services requested;
- (b) Employee name;
- (c) Hourly wage;
- (d) Hours per month;
- (e) Monthly pay;
- (f) Taxes;
- (g) Budget allowance; and
- (h) Six (6)-month budget.

(49) "Violent crime" is defined by KRS 17:165(3).

Section 2. Non-CDO Provider Participation. (1) In order to provide Michelle P. waiver services, excluding consumer-directed option services, a provider shall be:

(a) Licensed in accordance with:

1. 902 KAR 20:066 if an adult day health care provider;
2. 902 KAR 20:078 if a group home;
3. 902 KAR 20:081 if a home health service provider;
4. 902 KAR 20:091 if a community mental health center; or

(b) Be certified by the department in accordance with 907 KAR 1:145, Section 3, if a provider type not listed in paragraph (a) of this subsection.

(2) A Michelle P. waiver service provider shall:

(a) Provide services to Michelle P. waiver recipients:

1. Directly; or
2. Indirectly through a subcontractor;

(b) Comply with the following administrative regulations and program requirements:

1. 907 KAR 1:671;
2. 907 KAR 1:672; and
3. 907 KAR 1:673;

(c) Not enroll a Michelle P. recipient for whom the provider is unequipped or unable to provide Michelle P. waiver services; and

(d) Be permitted to accept or not accept a Michelle P. recipient.

Section 3. Maintenance of Records. (1) A Michelle P. waiver provider shall maintain:

(a) A clinical record for each Michelle P. recipient that shall contain the following:

1. Pertinent medical, nursing, and social history;
2. A comprehensive assessment entered on form MAP-351 and signed by the:

- a. Assessment team; and
- b. Department;

3. A completed MAP 109;
4. A copy of the MAP-350 signed by the recipient or his or her legal representative at the time of application or reapplication and each recertification thereafter;

5. The name of the case manager;
6. Documentation of all level of care determinations;
7. All documentation related to prior authorizations, including requests, approvals, and denials;
8. Documentation of each contact with, or on behalf of, a Michelle P. recipient;
9. Documentation that the Michelle P. recipient receiving ADHC services or legal representative was provided a copy of the ADHC center's posted hours of operation;
10. Documentation that the recipient or legal representative was informed of the procedure for reporting complaints; and
11. Documentation of each service provided. The documentation shall include:
  - a. The date the service was provided;
  - b. The duration of the service;
  - c. The arrival and departure time of the provider, excluding travel time, if the service was provided at the Michelle P. waiver recipient's home;
  - d. Itemization of each service delivered;
  - e. The Michelle P. recipient's arrival and departure time, excluding travel time, if the service was provided outside the recipient's home;
  - f. Progress notes which shall include documentation of changes, responses, and treatments utilized to meet the Michelle P. recipient's needs; and
  - g. The signature of the service provider; and
- (b) Fiscal reports, service records, and incident reports regarding services provided. The reports and records shall be retained:
  1. At least six (6) years from the date that a covered service is provided; or
  2. For a minor, three (3) years after the recipient reaches the age of majority under state law, whichever is longest.
- (2) Upon request, a Michelle P. provider shall make information regarding service and financial records available to the:
  - (a) Department;
  - (b) Kentucky Cabinet for Health and Family Services, Office of Inspector General or its designee;
  - (c) United States Department for Health and Human Services or its designee;
  - (d) United States Government Accountability Office or its designee;
  - (e) Kentucky Office of the Auditor of Public Accounts or its designee; or
  - (f) Kentucky Office of the Attorney General or its designee.

Section 4. Michelle P. Recipient Eligibility Determinations and Redeterminations. (1) A Michelle P. waiver service shall be provided to a Medicaid-eligible Michelle P. recipient who:

- (a) Is determined by the department to meet ICF-MR-DD level of care requirements in accordance with Section 5 of this administrative regulation; and
- (b) Would, without waiver services, be admitted to an ICF-MR-DD.
- (2) The department shall perform an ICF-MR-DD level of care determination for each Michelle P. recipient at least once every twelve (12) months or more often if necessary.
- (3) A Michelle P. waiver service shall not be provided to an individual who:
  - (a) Does not require a service other than:
    1. An environmental and minor home adaptation;
    2. Case management; or
    3. An environmental and minor home adaptation and case management;
  - (b) Is an inpatient of:
    1. A hospital;
    2. A nursing facility; or
    3. An ICF-MR-DD;
  - (c) Is a resident of a licensed personal care home; or
  - (d) Is receiving services from another Medicaid home and community based services waiver program.
- (4) A Michelle P. waiver provider shall inform a Michelle P. recipient or his legal representative of the choice to receive:
  - (a) Michelle P. waiver services; or
  - (b) Institutional services.

(5) An eligible Michelle P. recipient or the recipient's legal representative shall select a participating Michelle P. waiver provider from which the recipient wishes to receive Michelle P. waiver services.

(6) A Michelle P. waiver provider shall use a MAP-24 to notify the department of a Michelle P. service recipient's:

- (a) Termination from the Michelle P. waiver program; or
  - (b) 1. Admission to an ICF-MR-DD or nursing facility for less than sixty (60) consecutive days;
  2. Return to the Michelle P. waiver program from an ICF-MR-DD or nursing facility within sixty (60) consecutive days;
  - (c) Admission to a hospital; or
  - (d) Transfer to another waiver program within the department.
- (7) Involuntary termination of a service to a Michelle P. recipient by a Michelle P. provider shall require:

- (a) Simultaneous notice to the recipient or legal representative, the case manager or support broker, and the department at least thirty (30) days prior to the effective date of the action, which shall include:
  1. A statement of the intended action;
  2. The basis for the intended action;
  3. The authority by which the action is taken; and
  4. The recipient's right to appeal the intended action through the provider's appeal or grievance process;
- (b) Submittal of a MAP-24 to the department at the time of the intended action; and
- (c) The case manager or support broker in conjunction with the provider to:
  1. Provide the recipient with the name, address, and telephone number of each current provider in the state;
  2. Provide assistance to the recipient in making contact with another provider;
  3. Arrange transportation for a requested visit to a provider site;
  4. Provide a copy of pertinent information to the recipient or legal representative;
  5. Ensure the health, safety, and welfare of the recipient until an appropriate placement is secured;
  6. Continue to provide supports until alternative services are secured; and
  7. Provide assistance to ensure a safe and effective service transition.

Section 5. ICF-MR-DD Level of Care Criteria. (1) To meet ICF-MR-DD level of care criteria, an individual shall require physical or environmental management or rehabilitation and:

- (a) Have a developmental disability or significantly sub-average intellectual functioning and require a planned program of active treatment to attain or maintain an optimal level of functioning;
- (b) Require a protected environment while overcoming the effects of a developmental disability or sub-average intellectual functioning while:
  1. Learning fundamental living skills;
  2. Learning to live happily and safely within his or her limitations;
  3. Obtaining educational experiences which will be useful in self-supporting activities; or
  4. Increasing awareness of his or her environment; or
- (c) Have a primary psychiatric diagnosis if:
  1. Possessing care needs listed in paragraph (a) or (b);
  2. The individual's mental care needs are adequately handled in an ICF-MR-DD; and
  3. The individual does not require psychiatric inpatient treatment.
- (2) An individual who does not require a planned program of active treatment to attain or maintain an optimal level of functioning shall not meet ICF-MR-DD level of care criteria.
- (3) The department shall not determine that an individual fails to meet ICF-MR-DD level of care criteria solely due to the individual's age, length of stay in an institution, or history of previous institutionalization if the individual meets the criteria established in subsection (1) of this section.

Section 6. Enrollment. (1) The department shall enroll an individual on a 1st priority basis if the individual:

(a) Has an urgent need pursuant to 907 KAR 1:145, section 7(7)(b), regardless of whether the individual is on the SCL waiting list; and

(b) Meets the eligibility criteria established in Section 4 of this administrative regulation.

(2) After all first priority basis individuals have been enrolled, the department shall enroll remaining SCL waiting list individuals who meet the eligibility criteria established in Section 4 of this administrative regulation in accordance with the SCL waiting list provisions established in 907 KAR 1:145, Section 7.

(3) After all individuals have been enrolled pursuant to subsections (1) and (2) of this Section, the department shall utilize a first come, first served priority basis to enroll an individual who meets the eligibility criteria established in Section 4 of this administrative regulation.

Section 7. Covered Services. (1) A Michelle P. waiver service shall:

(a) Be prior authorized by the department to ensure that the service or modification of the service meets the needs of the Michelle P. recipient;

(b) Be provided pursuant to a plan of care or, for a CDO service, pursuant to a plan of care and support spending plan;

(c) Except for a CDO service, not be provided by a member of the Michelle P. recipient's family. A CDO service may be provided by a Michelle P. recipient's family member; and

(d) Shall be accessed within sixty (60) days of the date of prior authorization.

(2) To request prior authorization, a provider shall submit a completed MAP 10, MAP 109, and MAP 351 to the department.

(3) Covered Michelle P. waiver services shall include:

(a) A comprehensive assessment which shall:

1. Be completed by the department;

2. Identify a Michelle P. waiver recipient's needs and the services the Michelle P. waiver recipient or the recipient's family cannot manage or arrange for on the recipient's behalf;

3. Evaluate a Michelle P. waiver recipient's physical health, mental health, social supports, and environment;

4. Be requested by an individual seeking Michelle P. waiver services or the individual's family, legal representative, physician, physician assistant, QMRP, or ARNP;

5. Be conducted by an assessment team; and

6. Include at least one (1) face-to-face home visit by a member of the assessment team with the Michelle P. waiver recipient and, if appropriate, the recipient's family;

(b) A reassessment service which shall:

1. Be completed by the department;

2. Determine the continuing need for Michelle P. waiver services and, if appropriate, CDO services;

3. Be performed at least every twelve (12) months;

4. Be conducted using the same procedures used in an assessment service; and

5. Not be retroactive;

(c) A case management service which shall:

1. Consist of coordinating the delivery of direct and indirect services to a Michelle P. waiver recipient;

2. Be provided by a case manager who shall:

a. Arrange for a service but not provide a service directly;

b. Contact the Michelle P. waiver recipient monthly through a face-to-face visit at the Michelle P. recipient's home, in the ADHC center, or the adult day training provider's location.

c. Assure that service delivery is in accordance with a Michelle P. waiver recipient's plan of care;

d. Have a bachelor's degree from an accredited institution in a human services field and be supervised by:

(i) A QMRP;

(ii) A registered nurse who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability;

(iii) An individual with a bachelor's degree in a human service field who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability;

(iv) A qualified social worker who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability;

(v) A licensed marriage and family therapist who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability;

(vi) A licensed professional clinical counselor who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability;

(vii) A certified psychologist who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability; or

(viii) A licensed psychological practitioner at least two (2) years of experience working with individuals with mental retardation or a developmental disability;

e. Be an RN;

f. Be an LPN;

g. Be a qualified social worker;

h. Be an LMFT;

i. Be an LPCC;

j. Be a certified psychologist; or

k. Be a licensed psychological practitioner;

3. Not include a group conference;

4. Include development of a plan of care that shall:

a. Be completed on the MAP 109 using person-centered guiding principles;

b. Reflect the needs of the Michelle P. recipient;

c. List goals, interventions, and outcomes;

d. Specify services needed;

e. Determine the amount, frequency, and duration of services;

f. Provide for reassessment at least every twelve (12) months;

g. Be developed and signed by the case manager and Michelle P. waiver recipient, family member, or legal representative; and

h. Be submitted to the department no later than thirty (30) calendar days after receiving the department's approval of ICF-MR-DD level of care;

5. Include documentation with a detailed monthly summary note which includes:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care;

c. The signature, date of signature, and title of the individual preparing the note; and

d. Documentation of at least one (1) face-to-face meeting between the case manager and Michelle P. waiver recipient, family member, or legal representative; and

6. Include requiring a Michelle P. recipient or legal representative to sign a MAP-350 form at the time of application or reapplication and at each recertification to document that the individual was informed of the choice to receive Michelle P. waiver or institutional services;

(d) A homemaker service which shall consist of general household activities and shall:

1. Be provided by direct-care staff;

2. Be provided to a Michelle P. waiver recipient;

a. Who is functionally unable, but would normally perform age-appropriate homemaker tasks; and

b. If the caregiver regularly responsible for homemaker activities is temporarily absent or functionally unable to manage the homemaking activities; and

3. Include documentation with a detailed note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and

c. The signature, date of signature, and title of the individual preparing the note;

(e) A personal care service which shall:

1. Be age appropriate;

2. Consist of assisting a recipient with eating, bathing, dressing, personal hygiene, or other activities of daily living;

3. Be provided by direct-care staff;

4. Be provided to a Michelle P. recipient:
  - a. Who does not need highly skilled or technical care;
  - b. For whom services are essential to the recipient's health and welfare and not for the recipient's family; and
  - c. Who needs assistance with age-appropriate activities of daily living; and
5. Include documentation with a detailed note which shall include:
  - a. The month, day, and year for the time period each note covers;
  - b. Progression, regression, and maintenance toward outcomes identified in the plan of care;
  - c. The signature, date of signature, and title of the individual preparing the note; and
  - d. The beginning and ending time of service;
- (f) An attendant care service which shall consist of hands-on care that is:
  1. Provided by direct-care staff to a Michelle P. waiver recipient who:
    - a. Is medically stable but functionally dependent and requires care or supervision twenty-four (24) hours per day; and
    - b. Has a family member or other primary caretaker who is employed and not able to provide care during working hours;
  2. Not of a general housekeeping nature;
  3. Not provided to a Michelle P. waiver recipient who is receiving any of the following Michelle P. waiver services:
    - a. Personal care;
    - b. Homemaker;
    - c. ADHC;
    - d. Adult day training;
    - e. Community living supports; or
    - f. Supported employment; and
4. Include documentation with a detailed note which shall include:
  - a. The month, day, and year for the time period each note covers;
  - b. Progression, regression, and maintenance toward outcomes identified in the plan of care;
  - c. The signature, date of signature, and title of the individual preparing the note; and
  - d. Beginning and ending time of service;
- (g) A respite care service which shall be short term care based on the absence or need for relief of the primary caretaker and be:
  1. Provided by direct-care staff who provide services at a level which appropriately and safely meet the medical needs of the Michelle P. waiver recipient in the following settings:
    - a. The Michelle P. waiver recipient's place of residence; or
    - b. An ADHC center during posted hours of operation;
  2. Provided to a Michelle P. waiver recipient who has care needs beyond normal baby sitting; and
  3. Used no less than every six (6) months;
  4. Provided in accordance with 902 KAR 20:066, Section 2(1)(b)10a through c, if provided to a child under age 21 (twenty-one) in an ADHC center; and
5. Include documentation with a detailed note which shall include:
  - a. The month, day, and year for the time period each note covers;
  - b. Progression, regression, and maintenance toward outcomes identified in the plan of care;
  - c. The signature, date of signature, and title of the individual preparing the note; and
  - d. The beginning and ending time of service;
- (h) An environmental and minor home adaptation service which shall be a physical adaptation to a home that is necessary to ensure the health, welfare, and safety of a Michelle P. waiver recipient and which shall:
  1. Meet all applicable safety and local building codes;
  2. Relate strictly to the Michelle P. waiver recipient's disability and needs;
  3. Exclude an adaptation or improvement to a home that has no direct medical or remedial benefit to the Michelle P. waiver recipient;
  4. Be submitted on form MAP-95 for prior authorization; and

5. Include documentation with a detailed note which shall include:
  - a. The month, day, and year for the time period each note covers;
  - b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and
  - c. The signature, date of signature, and title of the individual preparing the note;
- (i) Occupational therapy which shall be:
  1. A physician ordered evaluation of a Michelle P. recipient's level of functioning by applying diagnostic and prognostic tests;
  2. Physician-ordered services in a specified amount and duration to guide a Michelle P. waiver member in the use of therapeutic, creative, and self-care activities to assist the recipient in obtaining the highest possible level of functioning;
  3. Training of other Michelle P. waiver providers on improving the level of functioning;
  4. Exclusive of maintenance or the prevention of regression;
  5. Provided by an occupational therapist or an occupational therapy assistant supervised by an occupational therapist in accordance with 201 KAR 28:130; and
6. Documented with a detailed staff note which shall include:
  - a. The month, day, and year for the time period each note covers;
  - b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and
  - c. The signature, date of signature, and title of the individual preparing the note;
- (j) Physical therapy which shall be:
  1. A physician-ordered evaluation of a Michelle P. waiver recipient by applying muscle, joint, and functional ability tests;
  2. Physician-ordered treatment in a specified amount and duration to assist a Michelle P. waiver recipient in obtaining the highest possible level of functioning;
  3. Training of other Michelle P. waiver providers on improving the level of functioning;
  4. Exclusive of maintenance or the prevention of regression;
  5. Provided by a physical therapist or a physical therapist assistant supervised by a physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:020; and
6. Documented with a detailed monthly summary note which include:
  - a. The month, day, and year for the time period each note covers;
  - b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and
  - c. The signature, date of signature, and title of the individual preparing the note;
- (k) Speech therapy which shall be:
  1. A physician-ordered evaluation of a Michelle P. waiver recipient with a speech or language disorder;
  2. A physician-ordered habilitative service in a specified amount and duration to assist a Michelle P. waiver recipient with a speech and language disability in obtaining the highest possible level of functioning;
  3. Training of other Michelle P. waiver providers on improving the level of functioning;
  4. Provided by a speech-language pathologist; and
  5. Documented with a detailed monthly summary note which include:
    - a. The month, day, and year for the time period each note covers;
    - b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and
    - c. The signature, date of signature, and title of the individual preparing the note;
- (l) An adult day training service which shall:
  1. Support the Michelle P. waiver recipient in daily, meaningful routines in the community;
  2. Stress training in:
    - a. The activities of daily living;
    - b. Self-advocacy;
    - c. Adaptive and social skills; and
    - d. Vocational skills;

3. Be provided in a community setting which may:
  - a. Be a fixed location; or
  - b. Occur in public venues;
4. Not be diversional in nature;
5. If provided on site:
  - a. Include facility-based services provided on a regularly-scheduled basis;
  - b. Lead to the acquisition of skills and abilities to prepare the recipient for work or community participation; or
  - c. Prepare the recipient for transition from school to work or adult support services;
6. If provided off site:
  - a. Shall:
    - (i) Include services provided in a variety of community settings;
    - (ii) Provide access to community-based activities that cannot be provided by natural or other unpaid supports;
    - (iii) Be designed to result in increased ability to access community resources without paid supports; and
    - (iv) Provide the opportunity for the recipient to be involved with other members of the general population; and
  - b. May be provided as:
    - (i) An enclave or group approach to training in which recipients work as a group or dispersed individually throughout an integrated work setting with people without disabilities;
    - (ii) A mobile crew performing work in a variety of community businesses or other community settings with supervision by the provider; or
    - (iii) An entrepreneurial or group approach to training for participants to work in a small business created specifically by or for the recipient or recipients;
7. Ensure that any recipient performing productive work that benefits the organization, be paid commensurate with compensation to members of the general work force doing similar work;
8. Require that a Michelle P. waiver provider conduct, at least annually, an orientation informing the recipient of supported employment and other competitive opportunities in the community;
9. Be provided at a time mutually agreed to by the recipient and Michelle P. waiver provider;
10. a. Be provided to recipients age twenty-two (22) or older; or  
 b. Be provided to recipients age sixteen (16) to twenty-one (21) as a transition process from school to work or adult support services;
11. Be documented with:
  - a. A detailed monthly summary note which shall include:
    - (i) The month, day, and year for the time period each note covers;
    - (ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and
    - (iii) The signature, date of signature, and title of the individual preparing the note; and
  - b. A time and attendance record which shall include:
    - (i) The date of service;
    - (ii) The beginning and ending time of the service;
    - (iii) The location of the service; and
    - (iv) The signature, date of signature, and title of the individual providing the service;
  - (m) A supported employment service which shall:
    1. Be intensive, ongoing support for a Michelle P. waiver recipient to maintain paid employment in an environment in which an individual without a disability is employed;
    2. Include attending to a recipient's personal care needs;
    3. Be provided in a variety of settings;
    4. Be provided on a one-to-one basis;
    5. Be unavailable under a program funded by either 29 U.S.C. Chapter 16 or 34 C.F.R. Subtitle B, Chapter III, proof of which shall be documented in the Michelle P. waiver recipient's file;
    6. Exclude work performed directly for the supported employment provider;
    7. Be provided by a staff person who has completed a supported employment training curriculum conducted by staff of the cabinet or its designee;
    8. Be documented by:
      - a. A detailed monthly summary note which shall include:
        - (i) The month, day, and year for the time period each note

- covers;
  - (ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and
  - (iii) The signature, date of signature, and title of the individual preparing the note; and
- b. A time and attendance record which shall include:
  - (i) The date of service;
  - (ii) The beginning and ending time of the service;
  - (iii) The location of the service; and
  - (iv) The signature, date of signature, and title of the individual providing the service;
- (n) A behavioral support service which shall:
  1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;
  2. Be provided to assist the Michelle P. waiver recipient to learn new behaviors that are directly related to existing challenging behaviors or functionally equivalent replacement behaviors for identified challenging behaviors;
  3. Include a functional assessment of the Michelle P. waiver recipient's behavior which shall include:
    - a. An analysis of the potential communicative intent of the behavior;
    - b. The history of reinforcement for the behavior;
    - c. Critical variables that preceded the behavior;
    - d. Effects of different situations on the behavior; and
    - e. A hypothesis regarding the motivation, purpose, and factors which maintain the behavior;
  4. Include the development of a behavioral support plan which shall:
    - a. Be developed by the behavioral specialist;
    - b. Be implemented by Michelle P. waiver provider staff in all relevant environments and activities;
    - c. Be revised as necessary;
    - d. Define the techniques and procedures used;
    - e. Be designed to equip the recipient to communicate his or her needs and to participate in age-appropriate activities;
    - f. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;
    - g. Reflect the use of positive approaches; and
    - h. Prohibit the use of restraints, seclusion, corporal punishment, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;
  5. Include the provision of training to other Michelle P. waiver providers concerning implementation of the behavioral support plan;
  6. Include the monitoring of a Michelle P. recipient's progress which shall be accomplished by:
    - a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and
    - b. The reports of a Michelle P. waiver provider involved in implementing the behavior support plan;
  7. Provide for the design, implementation, and evaluation of systematic environmental modifications;
  8. Be provided by a behavior support specialist;
  9. Be documented by a detailed staff note which shall include:
    - a. The date of service;
    - b. The beginning and ending time; and
    - c. The signature, date of signature, and title of the behavioral specialist;
  - (o) An ADHC service which shall:
    1. Be provided to a Michelle P. waiver recipient who is at least twenty-one (21) years of age;
    2. Include the following basic services and necessities provided to Medicaid waiver recipients during the posted hours of operation:
      - a. Skilled nursing services provided by an RN or LPN, including ostomy care, urinary catheter care, decubitus care, tube feeding, venipuncture, insulin injections, tracheotomy care, or medical monitoring;
      - b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;
      - c. Snacks;

d. Supervision by an RN;  
e. Age and diagnosis appropriate daily activities; and  
f. Routine services that meet the daily personal and health care needs of a Michelle P. waiver recipient, including:

- (i) Monitoring of vital signs;
- (ii) Assistance with activities of daily living; and
- (iii) Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by a Michelle P. waiver recipient;

3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the ADHC center;

4. Include respite care services pursuant to paragraph (g) of this subsection;

5. Be provided to a Michelle P. waiver recipient by the health team in an ADHC center which may include:

- a. A physician;
- b. A physician assistant;
- c. An ARNP;
- d. An RN;
- e. An LPN;
- f. An activities director;
- g. A physical therapist;
- h. A physical therapist assistant;
- i. An occupational therapist;
- j. An occupational therapist assistant;
- k. A speech pathologist;
- l. A social worker;
- m. A nutritionist;
- n. A health aide;
- o. An LPCC;
- p. An LMFT;
- q. A certified psychologist with autonomous functioning; or
- r. A licensed psychological practitioner; and

6. Be provided pursuant to a plan of treatment. The plan of treatment shall:

a. Be developed and signed by each member of the plan of treatment team which shall include the recipient or a legal representative of the recipient;

b. Include pertinent diagnoses, mental status, services required, frequency of visits to the ADHC center, prognosis, rehabilitation potential, functional limitation, activities permitted, nutritional requirements, medication, treatment, safety measures to protect against injury, instructions for timely discharge, and other pertinent information; and

c. Be developed annually from information on the MAP 351 and revised as needed; and

(p) Community living supports which shall:

1. Be provided to facilitate independence and promote integration into the community for an SCL recipient residing in his or her own home or in his or her family's home;

2. Be supports and assistance which shall be related to chosen outcomes and not be diversional in nature. This may include:

- a. Routine household tasks and maintenance;
- b. Activities of daily living;
- c. Personal hygiene;
- d. Shopping;
- e. Money management;
- f. Medication management;
- g. Socialization;
- h. Relationship building;
- i. Leisure choices;
- j. Participation in community activities;
- k. Therapeutic goals; or

l. Nonmedical care not requiring nurse or physician intervention;

3. Not replace other work or day activities;

4. Be provided on a one-on-basis;

5. Not be provided at an adult day-training or children's day-habilitation site;

6. Be documented by:

a. A time and attendance record which shall include:

(i) The date of the service;

(ii) The beginning and ending time of the service; and

(iii) The signature, date of signature and title of the individual providing the service; and

b. A detailed monthly summary note which shall include:

(i) The month, day, and year for the time period each note covers;

(ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and

(iii) The signature, date of signature, and title of the individual preparing the summary note; and

7. Be limited to sixteen (16) hours per day alone or in combination with adult day training, children's day habilitation, and supported employment.

Section 8. Consumer-Directed Option. (1) Covered services and supports provided to a Michelle P. waiver recipient participating in CDO shall be nonmedical and include:

(a) A home and community support service which shall:

1. Be available only under the consumer-directed option;

2. Be provided in the consumer's home or in the community;

3. Be based upon therapeutic goals and not diversional in nature; and

4. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO Michelle P. waiver services;

(b) Goods and services which shall:

1. Be individualized;

2. Be utilized to reduce the need for personal care or to enhance independence within the home or community of the recipient;

3. Not include experimental goods or services; and

4. Not include chemical or physical restraints;

(c) A community day support service which shall:

1. Be available only under the consumer-directed option;

2. Be provided in a community setting;

3. Be tailored to the consumer's specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the consumer for work or community activities, socialization, leisure, or retirement activities;

4. Be based upon therapeutic goals and not be diversional in nature; and

5. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO Michelle P. waiver services; or

(d) Financial management which shall:

1. Include managing, directing, or dispersing a consumer's funds identified in the consumer's approved CDO budget;

2. Include payroll processing associated with the individuals hired by a consumer or consumer's representative;

3. Include withholding local, state, and federal taxes and making payments to appropriate tax authorities on behalf of a consumer;

4. Be performed by an entity:

a. Enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and

b. With at least two (2) years of experience working with the Michelle P. services target population;

5. Include preparing fiscal accounting and expenditure reports for:

a. A consumer or consumer's representative; and

b. The department.

(2) To be covered, a CDO service shall be specified in a plan of care.

(3) Reimbursement for a CDO service shall not exceed the department's allowed reimbursement for the same or similar service provided in a non-CDO Michelle P waiver setting.

(4) A consumer, including a married consumer, shall choose providers and a consumer's choice shall be reflected or documented in the plan of care.

(5) A consumer may designate a representative to act on the consumer's behalf. The CDO representative shall:

(a) Be twenty-one (21) years of age or older;

(b) Not be monetarily compensated for acting as the CDO representative or providing a CDO service; and

(c) Be appointed by the consumer on a MAP 2000 form.



(6) A consumer may voluntarily terminate CDO services by completing a MAP 2000 and submitting it to the support broker.

(7) The department shall immediately terminate a consumer from CDO services if:

(a) Imminent danger to the consumer's health, safety, or welfare exists;

(b) The consumer fails to pay patient liability;

(c) The recipient's plan of care indicates he or she requires more hours of service than the program can provide; thus, jeopardizing the recipient's safety and welfare due to being left alone without a caregiver present; or

(d) The recipient, caregiver, family, or guardian threaten or intimidate a support broker or other CDO staff.

(8) The department may terminate a consumer from CDO services if it determines that the consumer's CDO provider has not adhered to the plan of care.

(9) Prior to a consumer's termination from CDO services, the support broker shall:

(a) Notify the assessment or reassessment service provider of potential termination;

(b) Assist the consumer in developing a resolution and prevention plan;

(c) Allow at least thirty (30) but no more than ninety (90) days for the consumer to resolve the issue, develop and implement a prevention plan, or designate a CDO representative;

(d) Complete, and submit to the department, a MAP 2000 terminating the consumer from CDO services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and

(e) Assist the consumer in transitioning back to traditional Michelle P. waiver services.

(10) Upon an involuntary termination of CDO services, the department shall:

(a) Notify a consumer in writing of its decision to terminate the consumer's CDO participation; and

(b) Except in a case where a consumer failed to pay patient liability, inform the consumer of the right to appeal the department's decision in accordance with Section 13 of this administrative regulation.

(11) A CDO provider shall:

(a) Be selected by the consumer;

(b) Submit a completed Kentucky Consumer Directed Option Employee Provider Contract to the support broker;

(c) Be eighteen (18) years of age or older;

(d) Be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;

(e) Be able to communicate effectively with the consumer, consumer representative, or family;

(f) Be able to understand and carry out instructions;

(g) Be able to keep records as required by the consumer;

(h) Submit to a criminal background check;

(i) Submit to a check of the nurse aide abuse registry maintained in accordance with 906 KAR 1:100 and not be found on the registry;

(j) Not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165(1) through (3);

(k) Complete training on the reporting of abuse, neglect, or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the consumer;

(l) Be approved by the department;

(m) Maintain and submit timesheets documenting hours worked; and

(n) Be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the consumer.

(12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of children who receive waiver services.

(13)(a) The department shall establish a six (6) month budget for a consumer based on the consumer's plan of care.

(b) A consumer's six (6) month budget shall not exceed \$20,000 unless:

1. The consumer's support broker requests a budget adjustment to a level higher than \$20,000; and

2. The department approves the adjustment.

(c) The department shall consider the following factors in determining whether to grant a six (6) month budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization;

2. The cost effectiveness of the proposed services;

3. Protection of the consumer's health, safety, and welfare; and

4. If a significant change has occurred in the recipient's:

a. Physical condition, resulting in additional loss of function or limitations to activities of daily living and instrumental activities of daily living;

b. Natural support system; or

c. Environmental living arrangement, resulting in the recipient's relocation.

(14) Unless approved by the department pursuant to subsection (13)(a) through (c) of this section, if a CDO service is expanded to a point in which expansion necessitates a six (6) month budget increase, the entire service shall only be covered via traditional (non-CDO) waiver services.

(15) A support broker shall:

(a) Provide needed assistance to a consumer with any aspect of CDO or blended services;

(b) Be available to a consumer twenty-four (24) hours per day, seven (7) days per week;

(c) Comply with all applicable federal and state laws and requirements;

(d) Continually monitor a consumer's health, safety, and welfare; and

(e) Complete or revise a plan of care using person-centered planning principles.

(16)(a) For a CDO participant, a support broker may conduct an assessment or reassessment; and

(b) A CDO assessment or reassessment performed by a support broker shall comply with the assessment or reassessment provisions established in this administrative regulation.

Section 9. Annual Expenditure Limit Per Individual. (1) The department shall have an annual expenditure limit per individual receiving services via this administrative regulation.

(2) The limit referenced in subsection (1) of this section:

(a) Shall be an overall limit applied to all services whether CDO services, Michelle P. services not provided via CDO, or a combination of CDO and Michelle P. services; and

(b) Shall equal \$63,000 per year.

Section 10. Incident Reporting Process. (1) An incident shall be documented on an incident report form.

(2) There shall be three (3) classes of incidents including:

(a) A class I incident which shall:

1. Be minor in nature and not create a serious consequence;

2. Not require an investigation by the provider agency;

3. Be reported to the case manager or support broker within twenty-four (24) hours;

4. Be reported to the guardian as directed by the guardian; and

5. Be retained on file at the provider and case management or support brokerage agency.

(b) A class II incident which shall:

1. Be serious in nature;

2. Involve the use of physical or chemical restraints;

3. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery;

4. Be reported by the provider agency to:

a. The case manager or support broker within twenty-four (24) hours;

b. The guardian within twenty-four (24) hours;

c. The department within ten (10) calendar days of discovery, and shall include a complete written report of the incident investigation and follow up; and

(c) A class III incident which shall:

1.a. Be grave in nature;

b. Involve suspected abuse, neglect, or exploitation;

c. Involve a medication error which requires a medical intervention; or

d. Be a death.

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2. Be immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and

3. Be reported by the provider agency to:

a. The case manager or support broker within eight (8) hours of discovery;

b. DCBS immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209;

c. The guardian within eight (8) hours of discovery; and

d. The department within eight (8) hours of discovery and shall include a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. If an incident occurs after 5 p.m. on a weekday or occurs on a weekend or holiday, notification to the department shall occur on the following business day.

(3) Documentation with a complete written report for a death shall include:

(a) The recipient's current plan of care;

(b) The recipient's current list of prescribed medications including pro re nata (PRN) medications;

(c) The recipient's current crisis plan;

(d) Medication administration review forms for the current and previous month;

(e) Staff notes from the current and previous month including details of physician and emergency room visits;

(f) Any additional information requested by the department;

(g) A coroner's report when received; and

(h) If performed, an autopsy report when received.

(4) All medication errors shall be reported to the department on a monthly medication error report form by the 15th of the following month.

**Section 11. Use of Electronic Signatures.** (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A home health provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, and contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature immediately upon request.

**Section 12. Reimbursement.** (1) The following Michelle P. waiver services, alone or in any combination, are limited to forty (40) hours per calendar week:

(a) Homemaker;

(b) Personal care;

(c) Attendant care;

(d) Supported employment;

(e) Adult day health care;

(f) Adult day training;

(g) Community living supports;

(h) Physical therapy;

(i) Occupational therapy;

(j) Speech therapy; and

(k) Behavior supports.

(2) Respite services shall not exceed \$4,000 per member, per calendar year.

(3) Environmental and minor home adaptation services shall

not exceed \$500 per member, per calendar year.

(4)(a) The department shall reimburse for a Michelle P. waiver service at the lesser of billed charges or the fixed upper payment rate for each unit of service.

(b) The following rates shall be the fixed upper payment rate limits:

Service	Fixed Payment Limit	Upper Rate	Unit of Service
Case Management	\$200.00		1 month
Respite	\$4,000 per calendar year		15 minutes
Homemaker	\$6.50		15 minutes
Personal Care	\$7.50		15 minutes
Attendant Care	\$2.90		15 minutes
Supported Employment	\$5.54		15 minutes
Adult Day Health Care	\$2.57		15 minutes
Adult Day Training	\$2.75		15 minutes
Community Living Supports	\$5.54		15 minutes
Physical Therapy	\$22.17		15 minutes
Occupational Therapy	\$22.17		15 minutes
Speech Therapy	\$22.17		15 minutes
Behavior Supports	\$33.25		15 minutes
Environmental and Minor Home Adaptation	\$500 per calendar year		
Financial Management	\$12.50 (not to exceed eight (8) units or \$100.00 per month)		15 minutes
Support Broker	\$265.00		One (1) month

**Section 13. Appeal Rights.** An appeal of a department determination regarding ICF-MR-DD level of care or services to a Michelle P. waiver recipient or a consumer shall be in accordance with 907 KAR 1:563.

**Section 14. Incorporation by Reference.** (1) The following material is incorporated by reference:

(a) "Person Centered Planning: Guiding Principles", March 2005 edition;

(b) "MAP-24, The Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Community Based Services Memorandum", February 2001 edition;

(f) "MAP-95 Request for Equipment Form" June 2007 edition;

(g) "MAP 109, Plan of Care/Prior Authorization for Waiver Services", March 2007 edition;

(h) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", January 2000 edition;

(i) "MAP-351, The Department for Medicaid Services, Medicaid Waiver Assessment", March 2007 edition;

(j) "MAP 2000, Initiation/Termination of Consumer Directed Option (CDO)", March 2007, edition; and

(k) "MAP-10, Waiver Services", March 2007 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ELIZABETH A. JOHNSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: July 16, 2008

FILED WITH LRC: July 17, 2008 at 2 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Kristina Hayden (502) 564-6204

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions for Michelle P. waiver service coverage and reimbursement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with an order issued by the Honorable Joseph M. Hood, United States District Court, Eastern District of Kentucky at Frankfort in response to the civil suit, Michelle P., by her next friend, Jim Deisenroth, et. al. v. Janie Miller, Secretary, Kentucky Cabinet for Health and Family Services, in her official capacity, et. al., Civil Action No. 02-23-JMH.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the provisions for Michelle P. waiver service coverage and reimbursement in compliance with an order issued by the Honorable Joseph M. Hood, United States District Court, Eastern District of Kentucky at Frankfort in response to the civil suit, Michelle P., by her next friend, Jim Deisenroth, et. al. v. Janie Miller, Secretary, Kentucky Cabinet for Health and Family Services, in her official capacity, et. al., Civil Action No. 02-23-JMH.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the provisions for Michelle P. waiver service coverage and reimbursement in compliance with an order issued by the Honorable Joseph M. Hood, United States District Court, Eastern District of Kentucky at Frankfort in response to the civil suit, Michelle P., by her next friend, Jim Deisenroth, et. al. v. Janie Miller, Secretary, Kentucky Cabinet for Health and Family Services, in her official capacity, et. al., Civil Action No. 02-23-JMH.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation is expected to affect thousands of individuals diagnosed with mental retardation or a developmental disability by providing community-based services in lieu of institutional care. This administrative regulation will allow qualified, Medicaid enrolled providers throughout the Commonwealth of Kentucky to provide services and receive corresponding reimbursement for services provided to qualifying enrolled individuals.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Those not enrolled as Medicaid providers who wish to provide Michelle P. services will have to enroll into the Medicaid program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This regulation should not impose additional costs on Medicaid providers. Organizations applying as new providers may incur new business start-up costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The new administrative regulation will provide services to citizens of the Commonwealth diagnosed with mental retardation or a developmental disability.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Departmental cost associated with this administrative regulation is difficult to project for the first fiscal year as costs is contingent upon several factors. Key factors include the number of individuals who enroll as well as the type and amount of services individuals receive. Services are provided in accordance with individualized plans of care which may vary substantially. Pursuant to the "Michelle P." settlement agreement, the Department for Medicaid Services (DMS) is committed to serving up to 3,000 individuals in the first year of the waiver should 3,000 present for services. As neither the number of individuals presenting for services nor the mix of services is predictable, the first fiscal year costs of the program is indeterminable. However, DMS estimates costs for an entire year of the program if operating at the initial full capacity level (3,000 individuals enrolled and receiving services) to be approximately \$66.5 million (state and federal funds combined.) Subsequent increases in capacity level, by fifty (50) percent in year two (2) followed by an additional fifty (50) percent increase in year three (3), would correspondingly increase the costs.

(b) On a continuing basis: Departmental cost associated with this administrative regulation is difficult to project for the first fiscal year as costs is contingent upon several factors. Key factors include the number of individuals who enroll as well as the type and amount of services individuals receive. Services are provided in accordance with individualized plans of care which may vary substantially. Pursuant to the "Michelle P." settlement agreement, the Department for Medicaid Services (DMS) is committed to serving up to 3,000 individuals in the first year of the waiver should 3,000 present for services. As neither the number of individuals presenting for services nor the mix of services is predictable, the first fiscal year costs of the program is indeterminable. However, DMS estimates costs for an entire year of the program if operating at the initial full capacity level (3,000 individuals enrolled and receiving services) to be approximately \$66.5 million (state and federal funds combined.) Subsequent increases in capacity level, by fifty (50) percent in year two (2) followed by an additional fifty (50) percent increase in year three (3), would correspondingly increase the costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: \$17.5 million has been allocated to the Department for Medicaid Services for the implementation of the Michelle P. waiver program. Of this \$17.5 million, approximately \$12 million will be from Title XIX federal funding and \$5 million will be general fund dollars. Departmental cost associated with this administrative regulation is difficult to project for the first fiscal year as costs is contingent upon several factors. Key factors include the number of individuals who enroll as well as the type and amount of services individuals receive. Services are provided in accordance with individualized plans of care which may vary substantially. Pursuant to the "Michelle P." settlement agreement, the Department for Medicaid Services (DMS) is committed to serving up to 3,000 individuals in the first year of the waiver should 3,000 present for services. As neither the number of individuals presenting for services nor the mix of services is predictable, the first fiscal year costs of the program is indeterminable. However, DMS estimates costs for an entire year of the program if operating at the initial full capacity level (3,000 individuals enrolled and receiving services) to be approximately \$66.5 million (state and federal funds combined.) Subsequent increases in capacity level, by fifty (50) percent in year two (2) followed by an additional fifty (50) percent increase in year three (3), would correspondingly increase the costs.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect each Medicaid eligible individual diagnosed with mental retardation or development disability choosing to access services through the Michelle P. waiver program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This action is necessary to comply with an order issued by the Honorable Joseph M. Hood, United States District Court, Eastern District of Kentucky at Frankfort in response to the civil suit, Michelle P., by her next friend, Jim Deisenroth, et. al. v. Janie Miller, Secretary, Kentucky Cabinet for Health and Family Services, in her official capacity, et. al., Civil Action No. 02-23-JMH.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate revenue for state or local government during the first year of program administration.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate revenue for state or local government during subsequent years of program administration.

(c) How much will it cost to administer this program for the first year? Departmental cost associated with this administrative regulation is difficult to project for the first fiscal year as costs is contingent upon several factors. Key factors include the number of individuals who enroll as well as the type and amount of services individuals receive. Services are provided in accordance with individualized plans of care which may vary substantially. Pursuant to the "Michelle P." settlement agreement, the Department for Medicaid Services (DMS) is committed to serving up to 3,000 individuals in the first year of the waiver should 3,000 present for services. As neither the number of individuals presenting for services nor the mix of services is predictable, the first fiscal year costs of the program is indeterminable. However, DMS estimates costs for an entire year of the program if operating at the initial full capacity level (3,000 individuals enrolled and receiving services) to be approximately \$66.5 million (state and federal funds combined.) Subsequent increases in capacity level, by fifty (50) percent in year two (2) followed by an additional fifty (50) percent increase in year three (3), would correspondingly increase the costs.

(d) How much will it cost to administer this program for subsequent years? Departmental cost associated with this administrative regulation is difficult to project for the first fiscal year as costs is contingent upon several factors. Key factors include the number of individuals who enroll as well as the type and amount of services individuals receive. Services are provided in accordance with individualized plans of care which may vary substantially. Pursuant to the "Michelle P." settlement agreement, the Department for Medicaid Services (DMS) is committed to serving up to 3,000 individuals in the first year of the waiver should 3,000 present for services. As neither the number of individuals presenting for services nor the mix of services is predictable, the first fiscal year costs of the program is indeterminable. However, DMS estimates costs for an entire year of the program if operating at the initial full capacity level (3,000 individuals enrolled and receiving services) to be ap-

proximately \$66.5 million (state and federal funds combined.) Subsequent increases in capacity level, by fifty (50) percent in year two (2) followed by an additional fifty (50) percent increase in year three (3), would correspondingly increase the costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

EDUCATION PROFESSIONAL STANDARDS BOARD  
(As Amended at ARRS, August 12, 2008)

**16 KAR 5:020. Standards for admission to educator preparation[teacher education].**

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(b) requires that an educator preparation[a teacher education] institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030 requires that a certificate shall be issued to a person who has completed a program approved by the Education Professional Standards Board. This administrative regulation establishes the standards for admission to an educator preparation program[a teacher education program].

Section 1. Selection and Admission to Educator Preparation Programs[Teacher Education Programs]. (1) In addition to appropriate National Council for Accreditation of Teacher Education standards incorporated under 16 KAR 5:010, each educator preparation[teacher education] institution shall develop and publish a plan of selection and admission of [teacher] candidates for the educator preparation[teacher education] program, which shall include:

- (a) Tests to measure general academic proficiency;
  - (b) An evaluation of the candidate's disposition for the education profession; and
  - (c) Affirmation that candidates are provided a review of the Professional Code of Ethics for Kentucky School Certified Personnel established in 16 KAR 1:020, to ascertain awareness, knowledge, and commitment as required for state educator certification.[Review of the Professional Code of Ethics for Kentucky School Personnel established in 16 KAR 1:020; and
  - (d) A declaration signed by each teacher candidate affirming a commitment to upholding the code and acknowledging awareness of information required for state certification.]
- (2) The educator preparation[teacher education] institution shall file the plan with the Education Professional Standards Board.

Section 2. Tests to Measure General Academic Proficiency. (1) The educator preparation[teacher education] institution shall determine whether each candidate[applicant] exhibits an acceptable level of competency in oral and written communication as an admission requirement.

(2) A candidate[student] who plans to apply for admission to an educator preparation[a teacher preparation] program shall provide to the teacher education institution official scores of tests to measure general academic proficiency. A person shall not be permitted to apply for admission to a preparation program leading to certification as an educator[a teacher] without first providing evidence of meeting the general academic proficiency requirement.

(3) The educator preparation [teacher education] institution shall select the means of evidence for meeting the general academic proficiency requirement, which may include a combination of:

- (a) College admission exams;
- (b) Praxis I exams administered by the Educational Testing Service;
- (c) Other assessments; or
- (d) Grade point average.

Section 3. (1) An educator preparation unit identified as "low performing" or "at risk of low performing" pursuant to 16 KAR 5:010 shall implement one (1) or more of the following assessment plans

for candidate admission:

(a) Plan I. A minimum composite score of 21 on the American College Test (ACT);

(b) Plan II. PreProfessional [The state minimum scores on the Communication Skills and General Knowledge portions of the Praxis tests reevaluated and approved by the Education Professional Standards Board;

(c) Plan III. Preprofessional] Skills Test (PPST) results, with the following minimum scores [the] [a] [minimum scores as listed below] [either on the]:

- 1. [Written format:
  - a.] Reading 173;
  - 2. [b.] Mathematics 173; and
  - 3. [c.] Writing 172; [d.] or
- 2. Computer-based format:
  - a. Reading 320;
  - b. Mathematics 318; and
  - c. Writing 318;]

(c) Plan III. [(d) Plan IV.] Graduate Record Examination (GRE) General Tests. Each educator preparation institution shall establish a minimum passing score on the GRE as a measurement of verbal reasoning, quantitative reasoning, and analytical writing skills for admission when the entry into the educator[teacher] preparation program is at the graduate level[. In addition, each institution shall administer or require a writing assessment and verify the minimum writing competency for each applicant]; or

(d) Plan IV. [(e) Plan V.] SAT with [I], a minimum composite score of 1470[990 and writing assessment].

(2)(a) An educator preparation unit identified as "low performing" or "at risk of low performing" pursuant to 16 KAR 5:010 shall require a candidate to obtain a cumulative grade point average of 2.50 on a 4.0 scale for admission to an educator preparation program[teacher education].

(b) A candidate who does not meet the grade point average established in paragraph (a) of this subsection shall possess a grade point average of 3.0 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework, for admission to an educator preparation program[teacher education].

Section 4. Annual Report. [(1)] Each educator preparation unit[teacher education institution] shall submit an electronic report annually to the Education Professional Standards Board, that includes the following program[including the following information:

(1) Demographic] data on candidates[students] admitted to educator preparation programs:

(1) The candidate's Education Professional Standards Board Person Identifier;

(2) The candidate's Student School Identification number;

(3) The candidate's Social Security number;

(4) The candidate's full name;

(5) The candidate's birth date;

(6) The candidate's Email Address;

(7) The candidate's present home mailing address;

(8) The candidate's permanent home mailing address;

(9) The candidate's phone number;

(10) The candidate's admission date;

(11) the candidate's grade point average; and

(12) The candidate's total hours prior to admission to the institution's educator preparation program[teacher preparation];

(2) The scores of the admission tests for each applicant, including scores for an applicant denied admission; and

(3) The grade point average for each applicant, including the grade point average for an applicant denied admission].

DR. JAMES G. CIBULKA, Chairperson  
APPROVED BY AGENCY: June 3, 2008

**VOLUME 35, NUMBER 3 – SEPTEMBER 1, 2008**

FILED WITH LRC: June 6, 2008 at 10 a.m.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

**FINANCE AND ADMINISTRATION CABINET  
Kentucky Retirement Systems  
(As Amended at ARRS, August 12, 2008)**

**105 KAR 1:170. Membership form requirements.**

RELATES TO: KRS 16.530, 61.525, 61.526, 61.540, 61.542, 61.545, 61.625, 78.540

STATUTORY AUTHORITY: KRS 61.645(9)(g), 26 C.F.R. 1.401-1(b)(1)(i), 26 U.S.C. 401(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. KRS 16.530, 61.526 and 61.540 require a member of the Kentucky Employees Retirement System, County Employees Retirement System or State Police Retirement System to file information with the Board of Trustees as a condition of membership. KRS 61.542 requires a member to file a designation of beneficiary. KRS 61.625 establishes the conditions under which a member may apply for a refund. 26 U.S.C. 401(a) provides that a qualified pension plan cannot make distributions prior to normal retirement age if a separation from service has not occurred. This administrative regulation establishes the information required for membership and establishes that the member shall not receive a refund unless the member has terminated employment.

Section 1. An employee eligible for participation on the date his agency first participates shall complete a "Form 2010, Election or Rejection of Participation", designating his desire to participate in or waive participation and benefits in the retirement system. The original form shall be kept on file in the retirement office.

Section 2. Within thirty (30) days of participation, an employee who is required to participate or who elects to participate shall complete a "Form 2001, Membership Information". The membership form shall be kept on file in the retirement office.

Section 3. An employee may also complete a "Form 2035, Beneficiary Designation" which shall be sent to the retirement office.

Section 4. (1) If an employee is simultaneously eligible to participate in more than one (1) of the Kentucky Retirement Systems, the employee may elect to participate in only one (1) system and waive participation in and any rights to benefits from the employment in the other system during the period of simultaneous employment.

(2) The employee shall notify the retirement system in writing of his intent to exercise this right under KRS 61.545(3). Upon receipt of the notification, the retirement system shall provide the employee with an estimate of the benefits that may be forfeited by the employee and the "Form 2026, Simultaneous Employment Choice of Systems", necessary for making an election.

(3) If the employee does not complete and return the form, the employee shall participate in both systems simultaneously and his service shall be prorated between the systems based on his ratio of his creditable compensation in each system to his total creditable compensation from all systems.

(4) If the employee submits the completed form, the employer that participates in the system in which the employee rejected participation shall be notified that it shall not report creditable compensation or contributions on the employee for the period of simultaneous employment. If contributions were reported prior to receipt of the form, the employer and employee contributions shall be refunded to the employer and employee and all service credit under

that system shall be deleted from the employee's account for the period of simultaneous employment.

Section 5. Pursuant to KRS 61.625, an employee who is not vested for monthly benefits may request a refund of his account by completing and returning a "Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection". The Kentucky Retirement Systems shall not issue a refund to a member unless the member has terminated employment with his employer.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ["Form 2010, "Election or Rejection of Participation", [(Rev.) 12/2006(5/98)]"]; and

(b) ["Form 2001, "Membership Information", [(Rev.) 2/02]"]; and

(c) ["Form 2035, "Beneficiary Designation", 6/03 [(Rev.) 3/02]"]; and

(d) ["Form 2026, "Simultaneous Employment Choice of Systems", [(Rev.) 5/98]"]; and

(e) ["Form 4525, "Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection", 5/08 [(Rev.) 6/02]"].

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, from the Kentucky Retirement Systems office at Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, [between the hours of] 8 a.m. to [and] 4:30 p.m. [Monday through Friday]

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: May 15, 2008

FILED WITH LRC: June 13, 2008 at 11 a.m.

CONTACT PERSON: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

**FINANCE AND ADMINISTRATION CABINET  
Kentucky Retirement Systems  
(As Amended at ARRS, August 12, 2008)**

**105 KAR 1:200. Retirement procedures and forms.**

RELATES TO: KRS 16.576, 16.577, 16.645, 61.590, 61.595, 61.623, 61.702, 61.705, 78.545

STATUTORY AUTHORITY: KRS 61.590(1), 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. KRS 61.590(1) requires that a member or beneficiary eligible to receive retirement benefits have on file at the retirement office each form required by the board. This administrative regulation establishes the procedures and forms for application for and receipt of retirement benefits by members of the Kentucky Retirement Systems.

Section 1. (1)(a) The member shall submit a Form 6000, Notification of Retirement, to the retirement systems no earlier than six (6) months prior to the member's desired effective retirement date.

(b) The member shall provide current information regarding any sick or compensatory leave balances with the Form 6000, Notification of Retirement.

(c) The member shall file a copy of the member's most recent check stub indicating the sick and compensatory leave balances or the member shall submit written verification by the member's employer of the member's sick and compensatory leave balances as of the member's actual or scheduled employment termination date.

(2) The member shall designate the beneficiary of the member's retirement allowance on the Form 6000, Notification of Retirement.

(3) The Form 6000, Notification of Retirement, shall be dated and the member's signature shall be witnessed.

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Section 2. (1) The retirement system shall provide an estimate of the member's retirement allowance based on the salary reported to the system and information that may be supplied by the member or the member's employer.

(2) The payment options and amounts available to the member shall be printed on the Form 6010, Estimated Retirement Allowance, and provided to the member with a place to designate the member's choice of payment option.

Section 3. (1)(a) The member shall designate a desired payment option and sign and date the Form 6010, Estimated Retirement Allowance.

(b) The member's signature on the Form 6010, Estimated Retirement Allowance, shall be witnessed and the Form 6010, Estimated Retirement Allowance, returned to the retirement office as required by subsection (2)(c) or (3) of this section.

(2)(a) The member's employment shall be terminated the month before the member's effective retirement date.

(b) The retirement office shall process the first payment in the month following the month in which the completed Form 6010, Estimated Retirement Allowance, and all other applicable forms as provided in this administrative regulation, have been filed at the retirement office.

(c) The Form 6010, Estimated Retirement Allowance, and all other applicable forms as provided in this administrative regulation, shall be filed in the retirement office on the last day of the month preceding the month of the member's effective retirement date.

(3) If the member is retiring pursuant to early retirement provisions, the member shall return the Form 6010, Estimated Retirement Allowance, within six (6) months of the member's retirement date to retain the effective date of retirement shown on the form.

(4)(a) If the member fails to return the Form 6010, Estimated Retirement Allowance, within six (6) months of the member's retirement date, the member's Form 6000, Notification of Retirement, shall be considered void and the member shall be required to submit a new Form 6000, Notification of Retirement.

(b) If a member's Form 6000, Notification of Retirement, is withdrawn, invalid, or voided, the beneficiary or beneficiaries and contingent beneficiary or beneficiaries designated on the last Form 2035, Beneficiary Designation, on file at the retirement office shall remain in full force and effect.

Section 4. (1)(a) The member shall provide the retirement system a copy of the member's birth certificate or other verification of age and, if a survivorship payment option is selected, a copy of the birth certificate or other verification of age of the beneficiary named on the member's Form 6000, Notification of Retirement.

(b) If the member's or beneficiary's name is no longer the same as the name listed on the birth certificate or other verification of age, the systems shall require the member or beneficiary to submit a marriage license, court order, or legally-binding documentation of the name change.

(2) The retirement system shall accept one (1) or more of the following as proof of age of the member or beneficiary:

- (a) Age record of the Social Security Administration;
- (b) Immigration and naturalization service records;
- (c) Baptismal record;
- (d) Marriage license;
- (e) School record;
- (f) Birth certificate;
- (g) Military discharge;
- (h) U.S. passport; or
- (i) Other reliable proof of age that may be used by the courts to verify the person's age.

Section 5. (1)(a) A recipient shall complete a Form 6130, Authorization for Deposit of Retirement Payment, to have the monthly retirement allowance deposited to an account in a financial institution.

(b) The member or financial institution shall provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's Office to the designated financial institution.

(2)(a) At any time while receiving a retirement allowance, the

recipient may change the designated institution by completing a new Form 6130, Authorization for Deposit of Retirement Payment and filing the form at the retirement office in Frankfort.

(b) The last Form 6130, Authorization for Deposit of Retirement Payment on file at the retirement office shall control the electronic transfer of the recipient's retirement allowance.

(3) The recipient may complete a Form 6135, Request for Payment by Check, if the recipient does not currently have an account with a financial institution or the recipient's financial institution does not participate in the electronic funds transfer program.

(4) The retirement office shall not process the retirement allowance until the recipient has filed a completed:

(a) Form 6130, Authorization for Deposit of Retirement Payment; or

(b) Form 6135, Request for Payment by Check.

Section 6. (1) The retirement office shall provide a Form 6120, Certification of Service, to the member to certify service with another agency participating in the Kentucky Retirement Systems for which the member may be eligible to purchase credit prior to employment termination.

(2) The retirement office shall, upon request, provide the member with the cost of purchasing the service and an estimate of the benefits attributable to the additional service credit.

Section 7. (1)(a) The retirement office shall provide forms for the selection or waiver of medical insurance coverage for the member, the member's spouse, or the member's dependents pursuant to the group insurance plan upon retirement.

(b) The recipient shall complete the Kentucky Employees Health Plan Health Insurance Application for the Kentucky Retirement Systems or the Form 6200, Kentucky Retirement Systems Medicare Eligible Insurance Enrollment Form.

(2)(a) If the insurance form is received by the last day of the month prior to the month the initial retirement allowance is processed, the insurance coverage shall be effective the first day of the month the recipient becomes eligible for insurance coverage.

(b) If the form is received or if changes are made within thirty (30) days following the first day of the month in which the initial retirement allowance is processed, coverage shall be effective the first day of the month following the month in which the initial retirement allowance is processed.

(3) A recipient who fails to submit a form selecting medical insurance coverage within thirty (30) days following the first day of the month in which the initial retirement allowance is processed shall not be eligible for benefits pursuant to the insurance plan until the following open enrollment period.

Section 8. (1) The retirement office shall provide a Form 6017, Federal Income Tax Withholding Preference for Periodic Payments, to the member to request that federal income taxes be withheld or not withheld from the member's retirement allowance.

(2) If the member is eligible for benefits from the excess benefit plan, the member shall provide the information required by 26 U.S.C. 3402 for purposes of federal income tax withholding from the member's retirement allowance.

Section 9. (1) The retirement office shall provide a Form 6030, Death Benefit Designation, to the member to designate a beneficiary for the death benefit provided by the Kentucky Retirement Systems.

(2) If the member does not file or incorrectly completes a Form 6030, Death Benefit Designation, the member's estate shall become the default beneficiary.

Section 10. (1) The retirement office shall not process a monthly retirement allowance until the member has filed at the retirement office:

(a) A Form 2001, Membership Information;

(b) A properly signed, witnessed, and dated Form 6010, Estimated Retirement Allowance;

(c) A copy of the member's birth verification;

(d) A copy of the birth verification for the beneficiary if selecting a survivorship option; and

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(e)1. A completed Form 6130, Authorization for Deposit of Retirement Payment; or

2. A completed Form 6135, Request for Payment by Check;  
and

~~(f) A completed Form 6751, "Member and Employer Certification Regarding Reemployment";~~

(2) The retirement office shall not process a lump sum retirement benefit until:

(a) The member has filed at the retirement office:

1. A Form 2001, Membership Information Form;

2. A properly signed, witnessed, and dated Form 6010, Estimated Retirement Allowance;

3. A Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution; and ~~and~~

4. A copy of the member's birth verification; and

~~[5. A completed Form 6751, "Member and Employer Certification Regarding Reemployment"; and]~~

(b) The member's employer has filed at the retirement office proof of the member's employment termination and reported all creditable compensation and accumulated sick leave.

(3) The retirement office shall not process a partial lump sum options retirement benefit until:

(a) The member has filed at the retirement office:

1. A Form 2001, Membership Information Form;

2. A properly signed, witnessed, and dated Form 6010, Estimated Retirement Allowance;

3. A Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution;

4. A copy of the member's birth verification; and ~~and~~

5. A copy of the birth verification for the beneficiary if selecting a survivorship option; and

~~[6. A completed Form 6751, "Member and Employer Certification Regarding Reemployment"; and]~~

(b) The recipient has filed a completed:

1. Form 6130, Authorization for Deposit of Retirement Payment; or

2. Form 6135, Request for Payment by Check.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 6000, "Notification of Retirement", July 2004;

(b) Form 6010, "Estimated Retirement Allowance", July 2004;

(c) Form 6130, "Authorization for Deposit of Retirement Payment", May 2008~~[October 2002]~~;

(d) Form 6120, "Certification of Service", July 2000;

(e) Form 6200, "Kentucky Retirement Systems Medicare Eligible Insurance Enrollment Form", October 2006;

(f) Form 6017, "Federal Income Tax Withholding Preference for Periodic Payments", May 2008~~[April 2003]~~;

(g) Form 6030, "Death Benefit Designation", May 2008~~[April 2002]~~;

(h) Form 6135, "Request for Payment by Check", February 2002;

(i) "Kentucky Employees Health Plan Health Insurance Application for the Kentucky Retirement Systems (KRS)", August~~[June]~~ 2007;

(j) Form 2001 "Membership Information", February 2002;

(k) Form 2035, "Beneficiary Designation", June 2003; and ~~and~~

(l) Form 6025, "Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution", May 2008~~[and]~~

~~(m) Form 6751, "Member and Employer Certification Regarding Reemployment," November 2007.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601[-6424], Monday through Friday, 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, Chair

APPROVED BY AGNECY: May 15, 2008

FILED WITH LRC: June 13, 2008 at 11 a.m.

CONTACT PERSON: J. Eric Wampler, Kentucky Retirement

Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

### FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (As Amended at ARRS, August 12, 2008)

#### 105 KAR 1:210. Disability procedures.

RELATES TO: KRS 16.505-16.652, 61.510-61.705, 78.510-78.852, 344.030, 29 C.F.R. Part 1630, 42 U.S.C. 12111(9)

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. KRS 16.582, 61.600, and 61.665 provide for a process for applying for disability retirement benefits to members of the retirement systems and a process for administrative appeal of a denial of an application or reapplication for disability retirement benefits. This administrative regulation establishes the procedure for filing an application or reapplication for disability retirement benefits and the procedures for filing an administrative appeal of a denial of an application for disability retirement benefits.

Section 1. (1) An application or reapplication ~~for~~ disability benefits shall be made on "Form 6000, Notification of Retirement".

(2)(a) The application or reapplication shall be filed at the retirement systems within twenty-four (24) months, which is 730 calendar days, of the applicant's last day of paid employment in a regular full-time position.

(b) The time period for filing an application or reapplication for disability retirement benefits shall begin on the day after the applicant's last day of paid employment in the regular full-time position and shall end at close of business on the following 730th day.

(c) If the last day of the period is a Saturday, Sunday, or state or federal holiday, then the application shall be valid if filed at the retirement systems by the close of the next business day following the weekend or holiday.

(d) The applicant's employer shall certify the applicant's last day of paid employment.

(e) An application or reapplication may be submitted prior to the applicant's last day of paid employment.

Section 2. (1) If the applicant is eligible to begin drawing early retirement benefits, the applicant shall be notified of the right to receive a retirement allowance while the disability application is being processed.

(2) Election of early retirement by the applicant shall not affect the application for disability retirement.

Section 3. (1) The applicant shall complete and submit to the retirement systems a "Form 8035, Employee's Job Description". The applicant's employer shall complete and submit to the retirement systems a "Form 8030, Employer's Job Description". Both the applicant and the employer shall provide information regarding applicant's request for reasonable accommodations and the reasonable accommodations available to applicant, whether or not the applicant actually accepted the reasonable accommodations.

(2) The retirement systems may require additional details from the applicant and the applicant's employer regarding the applicant's job duties, if necessary.

Section 4. (1) ~~If/When~~ the retirement systems requires an applicant to submit to a medical or psychological examination under KRS 61.665(2)(i) or 61.665(3)(c), the retirement systems shall reimburse the applicant for mileage from the applicant's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement systems. The applicant shall be reimbursed for the most direct and usually traveled routes.



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(2) Mileage shall be based on the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas." The applicant shall complete and submit a Form 8846, Independent Examination Travel Voucher indicating the mileage the applicant traveled from the applicant's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement systems. **The** applicant shall use the most direct and usually traveled routes.

(3) The mileage certified by the applicant shall not be greater than the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas" for the most direct and usually traveled route from applicant's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement systems. If the mileage certified by the applicant is greater than the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas" the retirement systems shall pay the applicant the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas".

(4) Reimbursement for use of a privately owned vehicle shall be made at the IRS established standard mileage rate which changes periodically; and shall not exceed the cost of commercial coach fare.

(5) Actual costs for parking shall be reimbursed upon submission of receipts. **The** applicant shall submit the originals of the parking receipts along with a written request for reimbursement.

(6) Actually bridge and highway toll charges shall be reimbursed if the bridge or highway is on the most direct and usually traveled route. **The** applicant shall submit the originals of the bridge and highway toll receipts along with a written request for reimbursement.

(7) **The** applicant shall file at the retirement office a completed Form 8846, Independent Examination Travel Voucher, within fifteen (15) days of the date of the examination or evaluation in order to receive reimbursement for travel expenses. ~~The provisions of this section shall only apply to applicants who filed an application for disability retirement benefits on or before July 12, 2004.~~

(2) ~~The applicant shall request his medical records from the physicians or medical facilities who have treated or evaluated the applicant. Payment for copies of medical records shall be the responsibility of the applicant.~~

(3) ~~The applicant's physicians or medical facilities shall submit copies of all medical records, test results or other information concerning the applicant to the retirement systems.~~

(4) ~~The applicant or his physicians may submit a current listing of the applicant's prescription medications.~~

(5) ~~Statements by the physicians shall not be considered medical evidence unless accompanied by documented medical records or test results.~~

(6) ~~The retirement systems shall pay a reasonable fee, not to exceed fifty (50) dollars, for a "Form 8045, Physician's Summary Report", to be completed by the applicant's physician. The applicant shall be responsible for any amount in excess of fifty (50) dollars.~~

(7) ~~When both the Form 8030, Employer's Job Description, and the Form 8035, Employee's Job Description, and medical information from all, but a minimum of two (2), physicians or medical facilities that have treated or examined the applicant have been received, the information shall be submitted to the medical examiners.~~

(8) ~~The time limits in KRS 61.665 for the applicant's actions in response to a denial, reduction or discontinuance of benefits shall be counted beginning on the day following receipt of notice by the applicant from the retirement systems.~~

(9) ~~The time limits shall continue until the close of business on the day the applicant files the necessary action with the retirement systems or the day the time period ends.~~

(10) ~~The period shall continue until the applicant receives written notice from the retirement systems of further denial.~~

(11) ~~The period to request a formal hearing shall not exceed the cumulative extension of time specified in KRS 61.665(2)(g).~~

~~(12) If the periods allowed under the statute have been exhausted, the applicant shall have no further right to appeal to the hearing officer.~~

~~(13) The applicant shall make a request for a formal hearing in writing.~~

~~(14) If the applicant is unable to attend or desires to reschedule a formal hearing:~~

~~(a) The applicant shall send the retirement systems a request in writing prior to the date of the hearing; and~~

~~(b) The hearing officer may reschedule the hearing upon a finding of good cause.~~

~~(15)(a) The hearing officer may request a prehearing conference or may consider new medical evidence not already part of the applicant's retirement file.~~

~~(b) The prehearing conference shall be an informal procedure, presided over by the hearing officer.~~

~~(c) Every effort shall be made by the parties to dispose of controversies, to narrow and define issues and to facilitate prompt resolution of the claim.~~

~~(16) If, at the conclusion of the prehearing conference, the parties have not reached an agreement on the issues, the hearing officer shall schedule a hearing to be held within sixty (60) days after the date of the prehearing conference, unless the applicant agrees to a longer period of time.~~

~~(17)(a) If the parties agree upon a resolution after the prehearing conference but before the hearing, the resolution agreement shall be filed with the hearing officer.~~

~~(b) The hearing shall be cancelled and notice of the cancellation shall be served on the parties.]~~

Section 5. The applicant shall provide to the retirement system information concerning his continuing status with regard to receipt of Workers' Compensation and Social Security disability benefits.

Section 6. ~~[(1) The provisions of this section shall apply to applicants who file their application or reapplication for disability retirement benefits at the retirement systems on or after July 13, 2004.]~~

~~(1)[(2)] The applicant shall complete and submit a "Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information." The applicant shall attach all medical information, forms, and other information for review by the medical examiners to the "Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information."~~

~~(2)[(3)] The retirement systems shall submit the completed "Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information" and all the attached information to the medical examiners upon receipt by the retirement systems.~~

~~(3)[(4)] The time periods prescribed in KRS 61.600 and 61.665 shall begin on the day the notification of the recommendation of the medical examiners is mailed by the retirement systems and shall end at close of business on the last day of the prescribed time period.~~

~~(4)[(5)] If the last day of the period is a Saturday, Sunday, or state or federal holiday, then the application shall be valid if filed at the retirement systems by the close of the next business day following the weekend or holiday.~~

~~(5)[(6)] An applicant's request for a formal hearing shall be made in writing.~~

~~(6)[(7)] Statements by the physicians shall not be considered medical evidence unless accompanied by documented medical records or test results.~~

Section 7. (1) The medical examiner may contact the applicant or the applicant's physicians to request additional medical evidence as necessary.

Section 8. (1) The hearing officer may allow the applicant to introduce, among other evidence, the determination of Workers' Compensation or Social Security Administration awarding disability benefits to the applicant.

(2) The hearing officer shall consider only objective medical records contained within the determination and shall not consider

vocational factors or be bound by factual or legal findings of other state or federal agencies.

Section 9. (1) The provisions of this section shall only apply to a member who began participating on or before July 31, 2004.

(2) If an application for disability is approved, the applicant's disability benefit shall be paid retroactive to the month following the month of the applicant's last day of paid employment.

(3) The service added for determining the disability retirement allowance shall be determined under KRS 16.582 if the applicant's last day of paid employment was in a hazardous position, or under KRS 61.605 if the applicant's last day of paid employment was in a nonhazardous position.

(4) If the applicant has both hazardous and nonhazardous service in the same system, the added service shall be prorated between hazardous and nonhazardous service based on the proportion of service in each position to the whole, except that all of the added service shall be applied toward the nonhazardous retirement allowance if:

(a) The applicant is disabled from a hazardous position as a result of an act in line of duty; and

(b) Twenty-five (25) percent of the applicant's final rate of pay is greater than the hazardous disability retirement allowance determined using the prorated added service.

(5) If the applicant has service in more than one (1) system administered by the Kentucky Retirement Systems, the added service shall be prorated between the systems based on the proportion of service in each system to the whole, except if the applicant is disabled from a hazardous position in one (1) system as a result of an act in line of duty and twenty-five (25) percent of the applicant's final rate of pay is greater than the hazardous disability retirement allowance determined using the prorated added service:

(a) All of the added service shall be applied toward the nonhazardous retirement system if the applicant is vested for disability benefits from the nonhazardous system.

(b) All of the added service shall be applied toward the hazardous retirement system if the applicant is not vested for disability benefits from the nonhazardous system.

Section 10. (1) If the applicant who is awarded disability retirement benefits did not receive early retirement benefits, upon the applicant's selection of a payment option, the retirement systems shall pay the applicant the total monthly retirement allowances payable from the effective date of disability retirement.

(2) (a) If the applicant received early retirement benefits, the retirement systems shall calculate and pay to the applicant the difference between the early retirement benefit which was paid to the applicant and the disability benefit.

(b) The applicant shall not change his payment option.

(3) If benefits are payable to dependent children, as defined in KRS 16.505(17), the parent or guardian shall provide:

(a) A completed Form 6456, Designation of Dependent Child;

(b) A verification of full-time student status of a child age eighteen (18) or over;

(c) A copy of the birth certificate of each dependent child;

(d) If a dependent child is a minor, a Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor. If the minor child has a court appointed guardian or conservator and the court appointed guardian or conservator completed the Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor, the guardian or conservator shall submit a copy of the court order appointing the guardian or conservator; and

(e) Notice of the death or marriage of a dependent child, or if the dependent child ceases to be a full-time student.

(f) A copy of the dependent child's verification of full-time student status shall be filed with the retirement system for each semester of study within thirty (30) days following the start and within thirty (30) days following the end of each semester.

(4) An increase provided to recipients under KRS 61.691 shall be applied to the applicant's disability benefit and payments to dependent children in determining the total retroactive payments owed to the applicant and dependent children.

Section 11. (1) The applicant shall notify the retirement sys-

tems of his intent to apply for workers' compensation or benefits from the Social Security Administration. Upon receipt of approval for workers' compensation or benefits from the Social Security Administration, the applicant shall file at the retirement systems a copy of the approval notice containing the amount of the award.

(2) To determine the maximum benefit under KRS 61.607, the following shall be added together:

(a) The applicant's gross monthly disability retirement allowance determined in accordance with KRS 61.605 or 16.582, excluding payments to dependent children and before any actuarial reduction for purposes of an optional retirement plan under KRS 61.635 or 16.576, converted to an annual amount.

(b) The applicant's total gross annual benefit from workers' compensation. If the applicant's benefit includes a lump sum payment or a payment for a period less than the applicant's lifetime, then an annualized benefit shall be determined as follows:

1. The gross amount of any lump sum payment shall be divided by the applicant's life expectancy, expressed in years, from the effective date of the award.

2. The total gross amount of all payments paid for any period other than the applicant's lifetime shall be divided by the applicant's life expectancy, expressed in years, from the effective date of the award.

3. The total determined in subparagraphs 1 and 2 of this paragraph shall be combined and added to the total gross annual amount of the applicant's lifetime benefit, if any.

(c) The applicant's gross monthly disability benefit from the Social Security Administration, excluding spouse or dependent benefits converted to an annual amount.

(3) If the projected combined monthly benefit exceeds 100 percent of the disabled employee's final rate of pay or final compensation, whichever is greater, the disability retirement allowance from the retirement system shall be reduced as follows:

(a) The difference shall be divided by twelve (12) and subtracted from the applicant's monthly retirement allowance determined in accordance with KRS 61.605 or 16.582, excluding payments to dependent children and before any actuarial reduction for purposes of an optional retirement plan under KRS 61.635 or 16.576.

(b) The actuarial reduction for the applicant's optional plan under KRS 61.635 or 16.576 shall be applied to determine the applicant's monthly retirement allowance. The reduction shall apply to all retirement allowances received since the date the combined benefits exceeded 100 percent of the higher of the applicant's final compensation or final rate of pay based on the effective dates of the individual benefits.

(4) The disability retirement allowance payable shall not be reduced below an amount which would result from a computation of retirement allowance under early retirement or the disability retirement allowance from the retirement system using the disabled employee's actual total service, whichever is greater.

Section 12. (1) A recipient shall complete a Form 6130, Authorization for Deposit of Retirement Payment, to have the monthly retirement allowance deposited to an account in a financial institution.

(2) The recipient and the financial institution shall provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's office to the designated financial institution.

(3)(a) At any time while receiving a retirement allowance, the recipient may change the designated institution by completing a new Form 6130, Authorization for Deposit of Retirement Payment, and filing the form at the retirement systems.

(b) The last Form 6130, Authorization for Deposit of Retirement Payment on file at the retirement systems shall control the electronic transfer of the recipient's retirement allowance.

(4) The recipient may complete a Form 6135, Request for Payment by Check.

(5) The retirement systems shall not process the retirement allowance until the recipient has filed a completed Form 6130, Authorization for Deposit of Retirement Payment or filed a completed Form 6135, Request for Payment by Check.

Section 13. Incorporation by Reference. (1) The following ma-

terial is incorporated by reference:

- (a) ~~["]Form 6000, "Notification of Retirement," July 2004["], Kentucky Retirement Systems];~~
- (b) ~~["]Form 8030, "Employer's Job Description," July 2004["], Kentucky Retirement Systems];~~
- (c) ~~["]Form 8045, "Physician's Summary Report," July 2001["], Kentucky Retirement Systems];~~
- (d) ~~["]Form 8035, "Employee's Job Description," July 2004["], Kentucky Retirement Systems];~~
- (d)(e) ~~["]Form 6110, "Affidavit of Authorization to Receive Funds on Behalf of Minor," May 2003 ["], Kentucky Retirement Systems];~~
- (e)(f) ~~["]Form 6456, "Designation of Dependent Child," July 2004["], Kentucky Retirement Systems];~~
- (f)(g) ~~["]Form 6130, Authorization for Deposit of Retirement Payment," May 2008 [October 2002," Kentucky Retirement Systems];~~
- (g)(h) ~~["]Form 6135, "Request for Payment by Check," February 2002,["], Kentucky Retirement Systems];~~ and
- (h)(i) ~~["]Form 8001, "Certification of Application for Disability Retirement and Supporting Medical Information," May 2008; and~~
- (i) ~~Form 8846, "Independent Examination Travel Voucher," May 2008 [July 2004," Kentucky Retirement Systems].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601[-6424], Monday through Friday, 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: May 15, 2008

FILED WITH LRC: June 13, 2008 at 11 a.m.

CONTACT PERSON: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

**FINANCE AND ADMINISTRATION CABINET  
Kentucky Retirement Systems  
(As Amended at ARRS, August 12, 2008)**

**105 KAR 1:220. Annual disability review.**

RELATES TO: KRS 16.645, 61.610, 61.615, 61.665, 78.545

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. KRS 61.610 and 61.615 provide for the employment and medical staff review of a recipient of a disability retirement allowance to determine if the recipient's disability retirement allowance should be continued or discontinued. This administrative regulation establishes the process for employment and medical staff reviews.

Section 1. (1) ~~The provisions of this section shall only apply to recipients who were notified by the retirement systems of their employment and medical staff review on or before July 12, 2004 and whose employment and medical staff review was in progress on or before July 12, 2004.~~

~~(a) A recipient of a disability retirement allowance shall be required to undergo a medical examination and financial review. The medical examination may include:~~

- ~~1. A review by the medical examiners of medical records or other information regarding any examination, evaluation, treatment, hospitalization, and outpatient care for the disability;~~
- ~~2. A medical examination by the medical examiners; or~~
- ~~3. An independent medical examination.~~

~~(b) The recipient shall complete and return a "Form 8100, Annual Disability Certification" to the retirement systems requesting employment and financial information and authorization from the recipient to release medical records or other information regarding any examination, evaluation, treatment, hospitalization, and outpa-~~

~~tient care for the disability which are necessary to complete the medical examinations and financial reviews. A recipient's failure to return a completed "Form 8100, Annual Disability Certification", or other requests for medical, employment, and financial information shall constitute a refusal to submit to a medical and financial review and shall be the basis to discontinue the recipient's retirement allowance pursuant to KRS 61.610(1).~~

~~(c) The recipient shall file with the retirement systems the names of the physicians, medical facilities, and other health care providers that treated or examined the recipient for the incapacity for which the recipient receives a disability retirement allowance.~~

~~(d) The retirement systems shall request the recipient's medical records or other information authorized in accordance with paragraph (b) of this subsection from the recipient's physicians, medical facilities, and other health care providers. The medical records or other information shall be submitted to the medical examiners for review utilizing the procedures consistent with KRS 61.665.~~

~~(2)(a) The recipient shall file a written notice with the retirement systems immediately upon employment in any capacity. The recipient shall identify the employer and include a written statement from the employer of a detailed list of the duties of the new position.~~

~~(b) The medical examiners shall review the duties of the position in which the recipient is employed by utilizing the procedures consistent with KRS 61.665 and recommend to the retirement systems if the employment constitutes a change in the recipient's disability status.~~

~~(3)(a) The retirement systems shall notify the recipient of the recommendation of the medical examiners. If the medical examiners recommend that disability benefits be discontinued, the recipient shall be notified of the procedures for filing additional medical records or other information regarding the disability, or for filing a request for a formal hearing, by utilizing the procedures consistent with KRS 61.665.~~

~~(b) If the medical examiners recommend that disability benefits be discontinued, the retirement systems shall notify the recipient of the recommendation. The recipient shall have sixty (60) days from the date of notification to file at the retirement systems additional medical records or other information regarding the disability or to appeal the recommendation to discontinue disability benefits by filing at the retirement systems a written request for an administrative hearing. An extension of time may be granted by the retirement systems for the recipient's filing of additional medical records or other information for reconsideration by the medical examiners. Pursuant to KRS 61.665(2)(g), the extensions of time shall not be for more than sixty (60) days for any one (1) extension, and the retirement systems shall not grant more than three (3) extensions. The cumulative extension of time shall not exceed 120 days. The extensions of time shall end upon written request of an administrative hearing.~~

~~(c) A recipient may file at the retirement systems a written request for an administrative hearing. The hearing shall be conducted by a hearing officer in accordance with KRS Chapter 13B. The written request for an administrative hearing shall be filed with the executive director at the retirement systems office in Frankfort. The request for a hearing shall include a short and plain statement for the basis of contesting the recommendation to discontinue disability benefits.~~

~~(d) The right to request a hearing shall be limited to a period of sixty (60) days, as described in paragraph (b) of this subsection, after the recipient has had notice of the medical examiners recommendation to discontinue disability benefits. If any extensions of time are granted by the retirement systems for the right to request a hearing, the extensions shall be as provided for in paragraph (b) of this subsection.~~

~~(e) Failure of the recipient to file additional medical records or other information regarding the disability or to request an administrative hearing within the time limits specified in paragraphs (b) and (d) of this subsection shall preclude the recipient from proceeding any further with the appeal of the recommendation to discontinue disability benefits, and the recipient's disability benefits shall be discontinued the next month after the expiration of the time limits.~~

~~(f) At the conclusion of the administrative appeal, the hearing~~

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officer shall file a recommended order with the board. The board shall issue a final order to continue or discontinue the recipient's disability benefits. A final order of the board to discontinue the recipient's disability benefits shall take effect the next month after the board issues a final order.

(g) Any person aggrieved by a final order of the board may seek judicial review, pursuant to KRS 61.665(5) and 13B.140.

Section 2. (1) The provisions of this section shall apply to recipients who receive notice from the retirement systems of their employment and medical staff review on or after July 13, 2004.

(2) The review form prescribed by the board to be completed and filed by the recipient at the retirement office in accordance with KRS 61.610 is the "Form 8101, Employment and Medical Staff Review Certification".

(a) The time periods prescribed in KRS 61.610 and 61.615 shall begin on the day the "Form 8101, Employment and Medical Staff Review Certification" or the notification of the recommendation of the medical examiners is mailed and shall end at close of business on the last day of the prescribed time period.

(b) If the last day of the time period is a Saturday, Sunday or state or federal holiday, then the application shall be valid if filed at the retirement systems by the close of the next business day following the weekend or holiday.

(2)(3) The recipient shall file a written notice with the retirement systems immediately upon beginning employment in any capacity. The recipient shall identify the employer and include a written statement from the employer of a detailed list of the duties of the new position.

Section 2. (1) If [When] the retirement systems requires a recipient to submit to a medical or psychological examination under KRS 61.615(3)(h), the retirement systems shall reimburse the recipient for mileage from the recipient's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the recipient's home address on file at the retirement systems. The recipient shall be reimbursed for the most direct and usually traveled routes.

(2) Mileage shall be based on the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas". The recipient shall complete and submit a Form 8846, Independent Examination Travel Voucher indicating the mileage the recipient traveled from the recipient's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the recipient's home address on file at the retirement systems. The recipient shall use the most direct and usually traveled routes.

(3) The mileage certified by the recipient shall not be greater than the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas" for the most direct and usually traveled route from recipient's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the recipient's home address on file at the retirement systems. If the mileage certified by the recipient is greater than the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas" the retirement systems shall pay the recipient the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas".

(4) Reimbursement for use of a privately owned vehicle shall be made at the IRS established standard mileage rate which changes periodically; and shall not exceed the cost of commercial coach fare.

(5) Actual costs for parking shall be reimbursed upon submission of receipts. The recipient shall submit the originals of the parking receipts along with a written request for reimbursement.

(6) Actual bridge and highway toll charges shall be reimbursed if the bridge or highway is on the most direct and usually traveled route. The recipient shall submit the originals of the bridge and highway toll receipts along with a written request for reimbursement.

(7) The recipient shall file at the retirement office a completed Form 8846, Independent Examination Travel Voucher, within fif-

teen (15) days of the date of the examination or evaluation in order to receive reimbursement for travel expenses.

Section 3. The retirement systems may request financial information from other state or federal agencies to determine if a recipient is receiving income or employed in a new position.

Section 4. The retirement systems may not require a medical review if the recipient's disability status is reviewed by the Kentucky Teachers' Retirement System.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) (1) "Form 8100, Annual Disability Certification, November 2002 and

(2) "Form 8101, "Employment and Medical Staff Review Certification", May 2008; [July 2004].]

(b) Form 8846, "Kentucky Retirement Systems Travel Voucher for Independent Examination", May 2008.

(3) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601[-6124], Monday through Friday, 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: May 15, 2008

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CONTACT PERSON: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

### FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (As Amended at ARRS, August 12, 2008)

#### 105 KAR 1:310. Fred Capps Memorial Act.

RELATES TO: KRS 16.505-16.652, 61.510-61.705, 78.510-78.852

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.621, The Fred Capps Memorial Act, enables an employee of a state-administered retirement system who is killed or disabled from a duty-related injury to receive death or disability benefits equal to those received by hazardous employees under KRS 16.582. This administrative regulation establishes the application and appeal procedure for duty-related death or injury benefits for nonhazardous employees.

#### Section 1. Application for Duty-related Injury Death Benefits.

(1)(a) A written request for duty-related injury death benefits may be made by the surviving spouse, or dependent child, or parent or guardian of dependent child at the Frankfort office of the Kentucky Retirement Systems.

(b) A claim for duty-related injury death benefits shall be verified by the deceased employee's immediate supervisor and agency head on the "Form 6800, Application for Death Benefits Duty Related/In Line of Duty".

(2)(a) The employer, surviving spouse, or dependent child shall submit the following documents:

1. A copy of the death certificate;
2. The employer death investigation report; and
3. An employee job description.

(b) The retirement system may request additional information or medical records, including hospital, emergency room, autopsy, or other related records, and police or other crime report, if necessary, from the employer, surviving spouse, or dependent child.

(3) The application for duty-related injury death benefits shall be reviewed by the board's medical examiners and administered in the same manner as provided in KRS 16.582 and 61.665.

#### Section 2. Application for Duty-related Injury Disability Benefits.

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(1)(a) A claim for duty-related injury disability benefits shall be filed by the employee at the Frankfort office of the Kentucky Retirement Systems.

(b) An application for duty-related injury disability benefits shall be made by the employee on the "Form 6000, Notification of Retirement".

(2) The application for duty-related injury disability benefits shall be reviewed by the board's medical examiners and administered in the same manner as provided in KRS 16.582 and 61.665.

Section 3. Time Period for Filing. (1)(a) The application or re-application for duty-related injury death or duty-related injury disability benefits shall be filed at the retirement office within twenty-four (24) months from the employee's last day of paid employment in a regular full-time position.

(b) The filing period shall begin on the day after the last day of paid employment in a regular full-time position and shall end at close of business on the following 730th calendar day.

(c) If the last day of the filing period is a Saturday, Sunday, or a state or federal holiday, then the application shall be timely filed if received in the retirement office by the close of the next business day following the weekend or holiday.

(2) If rejected, an employee's reapplication for duty-related injury disability benefits based on the same claim of incapacity shall be reconsidered for disability if accompanied by new objective medical evidence. The reapplication shall be filed at the retirement office within twenty-four (24) months from the employee's last day of paid employment in a regular full-time position.

Section 4. (1) If/When the retirement systems requires an applicant to submit to a medical or psychological examination under KRS 61.665(2)(i) or (3)(c), the retirement systems shall reimburse the applicant for mileage from the applicant's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement systems. The applicant shall be reimbursed for the most direct and usually traveled routes.

(2) Mileage shall be based on the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas." The applicant shall complete and submit a Form 8846, Independent Examination Travel Voucher indicating the mileage the applicant traveled from the applicant's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement systems. The applicant shall use the most direct and usually traveled routes.

(3) The mileage certified by the applicant shall not be greater than the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas" for the most direct and usually traveled route from applicant's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement systems. If the mileage certified by the applicant is greater than the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas" the retirement systems shall pay the applicant the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas."

(4) Reimbursement for use of a privately owned vehicle shall be made at the IRS established standard mileage rate which changes periodically; and shall not exceed the cost of commercial coach fare.

(5) Actual costs for parking shall be reimbursed upon submission of receipts. The applicant shall submit the originals of the parking receipts along with a written request for reimbursement.

(6) Actual bridge and highway toll charges shall be reimbursed if the bridge or highway is on the most direct and usually traveled route. The applicant shall submit the originals of the bridge and highway toll receipts along with a written request for reimbursement.

(7) The applicant shall file at the retirement office a completed Form 8846, Independent Examination Travel Voucher, within fifteen (15) days of the date of the examination or evaluation in order

to receive reimbursement for travel expenses

Section 5. Benefit Payment Procedures. (1) If the employee's application for duty-related injury disability benefits is approved, the employee's disability benefit shall be paid retroactive to the month following the month of the employee's last day of paid employment in a regular full-time position.

(2) If the employee did not receive early retirement benefits or disability retirement benefits under KRS 61.600, upon the employee's selection of a payment option, the retirement office shall pay the employee the total monthly retirement allowances owed.

(3)(a) If the employee did receive early retirement benefits or disability retirement benefits under KRS 61.600, the retirement office shall calculate and pay to the employee the difference between the early retirement benefit or disability retirement benefit which was paid to the employee and the duty-related disability benefit.

(b) The employee shall not change his payment option.

(4) If benefits are payable to a dependent child, the child's parent or guardian shall submit the following documents:

(a) A "Form 6456, Designation of Dependent Child";

(b) If the child is age eighteen (18) or over, verification of full-time student status;

(c) A copy of the birth certificate of each dependent child; and

(d) If a dependent child is a minor, a "Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor". If the minor has a court appointed guardian or conservator and the court appointed guardian or conservator completed the Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor, the guardian or conservator shall submit a copy of the court order appointing the guardian or conservator;

(e) The parent or guardian shall:

1. Notify the retirement system of the death or marriage of a dependent child or if the dependent child ceases to be a full-time student; and

2. Submit a copy of the dependent child's verification of full-time student status with the retirement system for each semester of study within thirty (30) days following the start and within thirty (30) days following the end of each semester.

(5) Any increases provided to recipients under KRS 61.691 shall be applied to the employee's disability benefit and payments to a dependent child in determining the total retroactive payments owed to the employee and dependent child.

(6) If upon review in accordance with KRS 61.610 or other applicable statute, the board determines that an employee receiving duty-related injury disability benefits no longer meets eligibility requirements, then the board shall determine if the employee is eligible for disability benefits under KRS 61.600.

Section 6.[5-] (1) A recipient shall complete a "Form 6130, Authorization for Deposit of Retirement Payment", to have the monthly retirement allowance deposited to an account in a financial institution.

(2) The recipient and the financial institution shall provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's Office to the designated financial institution.

(3)(a) At any time while receiving a retirement allowance, the recipient may change the designated institution by completing a new "Form 6130, Authorization for Deposit of Retirement Payment", and filing the form at the retirement office in Frankfort.

(b) The last "Form 6130, Authorization for Deposit of Retirement Payment", on file at the retirement office shall control the electronic transfer of the recipient's retirement allowance.

(4) The recipient may complete a "Form 6135, Request for Payment by Check".

(5) The retirement office shall not process the retirement allowance until the recipient has filed a completed "Form 6130, Authorization for Deposit of Retirement Payment", or filed a completed "Form 6135, Request for Payment by Check".

Section 7.[6-] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ["]Form 6800, "Application for Death Benefits Duty Relat-

ed/In Line of Duty", April 2003 ["Kentucky Retirement Systems];  
(b) ["Form 6000, "Notification of Retirement", July 2004["Kentucky Retirement Systems];  
(c) ["Form 6110, "Affidavit of Authorization to Receive Funds on Behalf of Minor", May 2003["Kentucky Retirement Systems];  
(d) ["Form 6456, "Designation of Dependent Child", July 2004["Kentucky Retirement Systems];  
(e) ["Form 6130, "Authorization for Deposit of Retirement Payment," May 2008 [October 2002," Kentucky Retirement Systems]; and  
(f) ["Form 6135, "Request for Payment by Check", February 2002["Kentucky Retirement Systems].  
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601[-6124], Monday through Friday, 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, Chair

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CONTACT PERSON: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

**NOTICE: This administrative regulation was amended at the August 12, 2008 meeting of the ARRS to comply with the format and drafting requirements of KRS Chapter 13A. Pursuant to 13A.320(1)(e), this administrative regulation is not being reprinted in its entirety.**

**FINANCE AND ADMINISTRATION CABINET  
Kentucky Retirement Systems**

**105 KAR 1:360. Health and hospital insurance.**

RELATES TO: KRS 61.702

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.702 provides for health and hospital insurance for eligible retirees, spouses, dependents, and beneficiaries. This administrative regulation establishes procedures for the administration of health and hospital insurance benefits.

**NOTICE: This administrative regulation was amended at the August 12, 2008 meeting of the ARRS to comply with the format and drafting requirements of KRS Chapter 13A. Pursuant to 13A.320(1)(e), this administrative regulation is not being reprinted in its entirety.**

**FINANCE AND ADMINISTRATION CABINET  
Kentucky Retirement Systems**

**105 KAR 1:370. Kentucky Retirement Systems Personnel Policies.**

RELATES TO: KRS 61.645(9)(c), (d), (g)

STATUTORY AUTHORITY: KRS 61.645(9)(d), (g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. KRS 61.645(9)(c) provides that, effective December 1, 2002, all employees of the Kentucky Retirement Systems shall be transferred to a personnel system adopted by the board of trustees. KRS 61.645(9)(d) requires the board of trustees to promulgate administrative regulations to establish a fair, equitable, and comprehensive personnel policy. These policies and procedures are incorporated by reference to comply with the provisions of KRS 61.645(d). This administrative regulation establishes the "Kentucky Retirement Systems Personnel Policies".

**TOURISM, ARTS, AND HERITAGE CABINET  
Kentucky Heritage Council  
(As Amended at ARRS, August 12, 2008)**

**300 KAR 6:020. Administration of Kentucky Rock Fence Preservation Program.**

RELATES TO: KRS Chapter 45A, 61.805 -61.850, 61.870 - 61.884, 171.391, 171.392, 171.393, Chapter 424, 36 C.F.R. 68(3)(c), (d)

STATUTORY AUTHORITY: KRS 171.381(3)(f), 171.393  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.393 establishes the Rock Fence Preservation Program and authorizes the Kentucky Heritage Council to promulgate administrative regulations in consultation with the Dry Stone Conservancy relating to the establishment of a grant program. [KRS 171.391 to 171.393 authorize the Kentucky Heritage Council, in consultation with the Dry Stone Conservancy, to promulgate administrative regulations governing administration of the Kentucky Rock Fence Preservation Program. To enable the Kentucky Heritage Council to fulfill its goal of protection of all meaningful vestiges of Kentucky's heritage for future generations, the Rock Fence Preservation Program provides grants and technical assistance to persons engaged in reconstruction or restoration of historic drylaid rock fences and historic mortared rock fences located in Kentucky.] This administrative regulation establishes criteria for participation in that grant program.

Section 1. Definitions. (1) "Applicant" means a person who applies for grant assistance from the Kentucky Rock Fence Preservation Program.

(2) "Application" means the form Kentucky Rock Fence Preservation Grant Application. (3) "Available grant funds" means money deposited in the rock fence preservation fund disbursed by the State Treasury under the Rock Fence Preservation Program established in KRS 171.393 and administered by the Kentucky Heritage Council for reconstruction and restoration of the Commonwealth's historic drylaid rock fences and historic mortared rock fences.

(4) "Council" is defined by KRS 171.391(1). (5) "Director" means the Executive Director of the Kentucky Heritage Council.

(6) "Eligible owner" means an owner that is [deemed to be] eligible under Section 2 of this administrative regulation to apply for grant assistance.

(7) "Eligible plan" means a reconstruction or restoration plan that meets the standards for reconstruction or restoration and has been approved by the director pursuant to Section 6 of this administrative regulation.

(8) "File" or "filed" means received at the office of the council or post-marked on or before the announced deadline.

(9) "Grant assistance" means grant funds awarded by the council from the Kentucky Rock Fence Preservation Program Grant Fund.

(10) "Historic drylaid rock fence" is defined by KRS 171.391(2).

(11) "Historic mortared rock fence" is defined by KRS 171.391(3).

(12) "Owner" means:

[a] The person, partnership, corporation, public agency, or other entity holding a fee simple interest in property located in Kentucky; or

[b].] A lessee of property, [is considered the owner of the property] if the remaining term of the lease is not less than twenty-seven and one-half (27 1/2) years for residential property and thirty-nine (39) years for all other property.

(13) "Performance and maintenance agreement" means the form Kentucky Rock Fence Preservation Performance and Maintenance Agreement, a written agreement between an eligible owner and the council in which the eligible owner agrees to implement an eligible plan for which the grant assistance is being awarded and to maintain the historic drylaid rock fences or[and] historic mortared rock fences in their restored condition for a period of time established in Section 9(3)(b) of this administrative regulation from the

date of the agreement.

(14) "Program year" means the period from July 1 to June 30.

(15) "Property" means real property located in Kentucky upon which historic drylaid rock fences or historic mortared rock fences are situated.

(16) "Reconstruction" means the act or process of depicting, by means of new construction, the form, features, and detailing of a nonsurviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

(17) "Reconstruction plan" means a plan describing the methods and materials, including location and condition of existing fences, to be utilized by persons engaged in the reconstruction of historic drylaid rock fences or historic mortared rock fences located in Kentucky.

(18) "Request for reimbursement" means the form Kentucky Rock Fence Preservation Grant Request for Reimbursement.

(19) "Restoration" means the process of accurately depicting the form, features, and character of historic drylaid rock fences or historic mortared rock fences as they appeared at a particular period of time by means of reconstruction of missing features for the restoration period and the removal of features from other periods in its history, if contemporary alterations and additions are not planned, and if substantial physical and documentary evidence exists for the work.

(20) "Restoration plan" means a plan describing the methods and materials, including location and condition of existing fences, to be utilized by persons engaged in the restoration of historic drylaid rock fences or historic mortared rock fences located in Kentucky.

(21) "Standards for reconstruction" means:

(a) The Secretary of the Interior's Standards for Reconstruction, 36 C.F.R. 68.3(d), as established by the U. S. Department of Interior; and

(b) The standards established in Section 3(3) of this administrative regulation.

(22) "Standards for restoration" means:

(a) The Secretary of the Interior's Standards for Restoration, 36 C.F.R. 68.3(c), as established by the U. S. Department of Interior; and

(b) The standards established in Section 3(3) of this administrative regulation.

Section 2. Eligible Owners. An owner [Owners] of real property in Kentucky upon which historic drylaid rock fences or historic mortared rock fences are situated shall be eligible if the owner meets [they meet] the following criteria:

(1) The historic drylaid rock fences or historic mortared rock fences are in need of reconstruction or restoration, through no deliberate act by the owner, and still possess enough historic integrity to enable a determination of location, style, and dimensions;

(2) A reconstruction or restoration plan has been prepared that conforms to the standards for reconstruction or restoration; and

(3) The owner agrees to enter into a performance and maintenance agreement with the council.

Section 3. Standards for Reconstruction and Restoration. (1) An eligible plan for reconstruction shall comply with the Secretary of the Interior's Standards for Reconstruction, 36 C.F.R. 68.3(d), as established by the U.S. Department of Interior.

(2) An eligible plan for restoration shall comply with the Secretary of the Interior's Standards for Restoration, 36 C.F.R. 68.3(c), as established by the U.S. Department of Interior.

(3) In addition to the standards required in subsections (1) and (2) of this section, an eligible plan for reconstruction or restoration shall comply with the following standards:

(a) Historic drylaid rock fence shall be restored or reconstructed if feasible following the plan specifications set forth in the Special Note for Drylaid Rock Fences, KHC Form RFPP-4;

(b) If the level of damage or deterioration precludes repair, replacement shall be with stones that match the surviving portions of the fence in form, size, and color, utilizing the same styles and construction techniques; (a) The standards for

reconstruction and restoration shall be the criteria used to determine if the reconstruction or restoration qualifies as an eligible plan.

(b) The standards promote the protection, retention, maintenance, and long-term preservation of a property's historic drylaid rock fences and historic mortared rock fences in Kentucky.

(c) In addition to the standards of restoration set forth in subsection 3(2) of this section and standards of reconstruction set forth in subsection (3) of this section, historic drylaid rock fence shall be restored or reconstructed if feasible following the plan specifications set forth in the Special Note for Drylaid Rock Fences, KHC Form RFPP-4.

(2) Restoration standards provide that if existing conditions of the fences warrant more extensive work, repair is recommended with the surviving stones.

(a) If the level of damage or deterioration precludes repair, replacement shall be with stones that match the surviving portions of the fences in form, size, and color utilizing the same styles and construction techniques.

(b) A restoration plan for historic drylaid rock fences and historic mortared rock fences shall meet the following standards for restoration:

1. A property shall be used as it was historically or be given a new use that interprets the property and its restoration period;

2. Materials and features from the restoration period shall be retained and preserved. The removal of materials or alteration of features, spaces, and spatial relationships that characterize the period shall not be undertaken;

3. Each property shall be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate, and conserve materials and features from the restoration period shall be physically and visually compatible, identifiable upon close inspection, and properly documented for future research;

4. Materials, features, spaces, and finishes that characterize other historical periods shall be documented prior to their alteration or removal;

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the restoration period shall be preserved;

6. Deteriorated features from the restoration period shall be repaired rather than replaced. If the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture and, if possible, materials;

7. Replacement of missing features from the restoration period shall be substantiated by documentary and physical evidence. A false sense of history shall not be created by adding conjectural features, features from other properties, or by combining features that never existed together historically;

8.a. Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible.

b. Treatments that cause damage to historic materials shall not be used;

9.a. Archeological resources affected by a project shall be protected and preserved in place; or

b. if resources are required to be disturbed, data recovery measures shall be undertaken; and

10. Designs that were never executed historically shall not be constructed.

(3) Reconstruction standards establish a framework for recreating vanished or non-surviving fences with new materials, primarily for interpretive purposes. A reconstruction plan for historic drylaid rock fences and historic mortared rock fences shall meet the following standards for reconstruction:

(a) Reconstruction shall be used to depict vanished or non-surviving portions of a property if documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture and such reconstruction is essential to the public understanding of the property;

(b) Reconstruction of a landscape, building, structure, or object in its historic location shall be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts that are essential to an accurate reconstruction. If such resources are disturbed, mitigation measures shall be undertaken;

(c) Reconstruction shall include measures to preserve any



remaining historic materials, features, and spatial relationships;

(d) 1. Reconstruction shall be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties.

2. A reconstructed property shall recreate the appearance of the nonsurviving historic property in materials, design, color, and texture;

(e) A reconstruction shall be clearly identified as a contemporary recreation; and

(f) Designs that were never executed historically shall not be constructed.]

**(c) [(4)]** The quality of materials, craftsmanship, and related new construction in reconstruction or restoration shall match the quality of materials, craftsmanship, and design of the historic fence in question.

**1. An application shall be denied if an owner uses improperly applied treatments or materials containing physical properties that** (a) 1. Certain treatments, if improperly applied, or certain materials by their physical properties, may] cause or accelerate physical deterioration of historic fences.

**2. Prior to application, the owner shall consult with the council for a determination of what measures are appropriate for the owner's fence.**

**3. Inappropriate measures shall include:**

**a. [** and use of these treatments or materials shall result in denial of the application.

2. The burden is upon the owner to consult with the council for a determination as to what measures are appropriate.

**(b) Inappropriate measures include:**

1. Improper masonry repointing materials and techniques;

**b. [2.]** Improper exterior masonry cleaning methods;

**c. [3.]** Inappropriate patching, splicing, or other reinforcing methods or materials;

**d. [4.]** Utilization of materials or design which are incompatible with surviving portions of the fence; and

**e. [5.]** Utilization of stones that have been removed, harvested, or taken from other historic stone structures without prior approval of the council; **and**

**(d) If prior inappropriate repairs or other circumstances make it**[-

(5) In certain cases such as prior inappropriate repairs, it may be] necessary to completely dismantle and rebuild portions of a historic drylaid rock fence or historic mortared rock fence to stabilize and repair weakened structural members. [In these cases,] the council shall consider this intervention as part of the reconstruction or restoration plan if:

**1. [(a)]** The necessity for dismantling is supported by documentation;

**2. [(b)]** The plan shall involve the least degree of intervention necessary to accomplish the reconstruction or restoration; and

**3. [(c)]** Adequate surviving stones shall be retained to maintain the architectural and historic integrity of the fence overall.

Section 4. Solicitation of Applications. (1) Within ninety (90) days from the date grant funds are made available in each program year, the council shall establish a deadline for filing of applications for grant assistance.

(2) An eligible owner shall be permitted to file only one (1) application per program year.

(3) The council shall provide an opportunity for eligible owners to file applications in time for the next program year by:

**(a)** Announcing available grant funds to appropriate news media, including local newspapers;

**(b) Providing**[- providing] notices to local historic preservation programs and groups;[-] and

**(c) Publishing** [by publishing] notices on **the council's Web site** [certain state] and nonprofit Web sites.

Section 5. Contents and Completion of Applications. (1) Contents of application. An eligible owner shall file with the council the Kentucky Rock Fence Preservation Grant Application, KHC Form RFP-1, in order to apply for grant assistance. The **owner shall provide the** following information [shall be provided]:

(a) **Name and mailing address of owner** [Names and mailing addresses of owners];

(b) Address of property;

(c) Photographic documentation of the fences showing areas to be recreated or restored and areas that do not need reconstruction or restoration, but supply sufficient information as to the styles and techniques used in construction of the fences and features unique to the fences;

(d) A brief written description of appearance including method of construction, materials, size, alterations, distinctive features and spaces, and dates of construction;

(e) A brief statement of significance summarizing how the fences reflect the value that gives the property its distinctive historical and visual character and explaining any significance attached to the property itself;

(f) A copy of a map, plat, or a PVA aerial map, indicating where the subject property is located and denoting where the fences are located on the property;

(g) A reconstruction or restoration plan that conforms to the standards **for** reconstruction or for restoration;

(h) Estimates for total cost of the reconstruction or restoration along with qualifications of contractors solicited to perform the reconstruction or restoration;

(i) Indication of willingness to enter into a performance and maintenance agreement with the council; and

(j) Signature of the owner.

(2) Completion of an application.

(a) An eligible owner who does not have a reconstruction or restoration plan may request technical assistance from the council.

(b) If the reconstruction or restoration plan has been submitted, the application shall be reviewed in accordance with the eligibility and prioritization criteria established by this administrative regulation.

Section 6. Review of Applications. (1) The director shall review all applications that have been submitted to the council by the established deadline.

(2) The director shall invite comments on the applications from other entities such as the Dry Stone Conservancy, Certified Local Governments, and the Kentucky Department of Transportation.

(3) The director shall determine **whether:**

**(a) The applicant is an eligible owner;**

**(b) The reconstruction or restoration plan is an eligible plan; and**

**(c) The application has been completed in accordance with the requirements of this administrative regulation** [if the applicant is an eligible owner, if the reconstruction or restoration plan is an eligible plan, and if the application has been completed in accordance with the requirements of this administrative regulation].

(4) The director shall make a list of all applications that have been determined to be eligible, and shall submit the list to the council.

Section 7. Prioritization of Applications. The council shall prioritize applications determined to be eligible by the director based on the following criteria:

(1) Correct completion and submission of all parts of the application;

(2) Applicant is determined to be an eligible owner;

(3) Application contains **a** reconstruction or restoration **plan** [plans] for historic drylaid rock fences **or** [and] historic mortared rock fences that **meets** [meet] the standards for reconstruction or restoration as set forth in Section 3 of this administrative regulation;[-]

(4) Application establishes a project consistent with the mission of long-term preservation and maintenance of historic drylaid rock fences and historic mortared rock fences in Kentucky;

(5) Applicant agrees to comply with the regulations in the administration of the reconstruction or restoration project as set forth in Section 3 of this administrative regulation;

(6) Clear identification and documentation of need;

(7) Clearly stated project objectives that can be achieved within the project term and are



feasible in light of projected resources available without impacting other historic stone structures;

(8) Sound project planning as evidenced by:

(a) The narrative descriptions; and

(b) The proposed budget that:

1. Supports the activities of the project;

2. Is reasonable and adequate to achieve the objectives;

3. Is cost-effective; and

4. Substantiates availability of matching funds; [in the narrative descriptions and proposed budget that supports the activities of the project, is reasonable and adequate to achieve the objectives, is cost-effective, and substantiates availability of matching funds;]

(9) A clear description of the scope of work, methodology, time frame, anticipated product, and qualifications of proposed contractors;

(10) Performance on past state or federal grant projects funded by the Kentucky Heritage Council, the African American Heritage Commission, or the Native American Heritage Commission, as measured by adherence to all contractual requirements, both fiscal and programmatic;

(11) Potential for duplication of efforts by other organizations or individuals;

(12) Location of the fences in relation to the public viewshed or rarity of the location of the fences, such as a pasture field; and

(13) Degree of urgency to protect fences in imminent danger of being damaged or destroyed, including dangers posed by proximate position to roads.

Section 8. Allocation of Grant Assistance. (1) Available grant funds shall be allocated to eligible owners by the council based on the recommendation of the eligible plans approved by the director and in accordance with the prioritization system established in Section 7 of this administrative regulation.

(2) The council shall vote upon final awards of grant assistance at a meeting conducted in accordance with the Open Meetings Law, KRS 61.805 to 61.850, and Open Records Law, KRS 61.870 to 61.884.

(3) The council shall announce the award of grant assistance to applicants in writing within thirty (30) days after determining final awards.

Section 9. Execution of Performance and Maintenance Agreements. (1) After an application has been awarded grant assistance, the applicant and the council shall execute a performance and maintenance agreement.

(2) Funds shall not be made available to an eligible owner until a performance and maintenance agreement has been executed by all parties.

(3) Requirements of performance and maintenance agreements.

(a) The applicant shall meet the following requirements in the performance and maintenance agreement [shall require the applicant to meet the following requirements]:

1. The applicant shall agree to perform the reconstruction or restoration work in accordance with the standards for reconstruction or restoration as set forth in Section 3 of this administrative regulation.

2. Work shall commence after the execution of the performance and maintenance agreement and shall be completed within twelve (12) months from the date of execution of the performance and maintenance agreement.

3. Written requests for extensions of time or for amendments to the performance and maintenance agreements shall be approved by the director only if there is a showing of substantial justification;

(b) The applicant shall agree to maintain the approved project beginning with the date the performance and maintenance agreement was executed and thereafter for a term of:

1. Five (5) years if the grant is \$10,000 or less;

2. Ten (10) years if the grant is greater than \$10,000 but less than \$20,000; or

3. Twenty (20) years if the grant is \$20,000 or more; [five (5) years if the grant is \$10,000 or less, for a term of ten (10) years if the grant is greater than \$10,000 but less than \$20,000, and for a

term of twenty (20) years if the grant is \$20,000 or more;]

(c) In addition to a maintenance agreement, an applicant receiving a grant of \$20,000 or more shall have executed a covenant between the owner and the council and recorded with the land records as an encumbrance running with the subject property for a period of twenty (20) years;

(d) Upon completion of the approved project, the applicant shall notify the council that the historic drylaid rock fences or historic mortared rock fences have been restored and shall provide to the council adequate documentation, including photographs, of the completed project;

(e)1. The applicant shall agree that if there is a transfer of ownership of the property within the term established in Section 9(3)(b) of this administrative regulation from date of execution of the performance and maintenance agreement, the applicant shall execute a contract with the transferee requiring continuation of ~~the~~[these] performance and maintenance agreement until the expiration of the term.

2. If the transferee does not agree in writing to properly maintain the historic drylaid rock fences or historic mortared rock fences for the remainder of the term, the applicant shall refund a pro-rated amount of the grant assistance based upon any whole years of time remaining on the term of the performance and maintenance agreement; [all or part of the grant assistance, as determined by the council;]

(f) The applicant shall agree that if the applicant fails to comply with the terms of the performance and maintenance agreement, the council shall, upon reasonable notice to the recipient:

1. Withhold further payment;

2. Suspend the grant;

3. Terminate the grant for cause; or

4. Take other legally available remedies that shall be appropriate under the circumstances to recover the funds disbursed; and [withhold further payment, suspend the grant, terminate the grant for cause, or take other legally available remedies that shall be appropriate under the circumstances to recover the funds disbursed; and]

(g)1. Depending upon the source of available grant funds, an applicant may be required to comply with appropriate state or federal laws relevant to the source; [An applicant shall comply with all appropriate state or federal laws governing the available grant funds, including permits, environmental requirements, records retention, prevailing wage rates;]

2. All procurements shall follow KRS Chapter 45A or 424; [and]

3. All procurements shall follow local procurement guidelines; and

4. An applicant shall obtain any required local permits.

(4) Effect of performance and maintenance agreement. Requirements for performance and maintenance applied to the historic drylaid rock fences or historic mortared rock fences using grant assistance shall be established in the performance and maintenance agreement.

(5) To receive funds the recipient shall provide the following:

(a) A Kentucky Rock Fence Preservation Grant Request for Reimbursement form accompanied by adequate supporting documentation including cancelled checks, proof of payment, invoices, and receipts; and

(b) Photographic documentation and written verification from the owner that the project has been completed in accordance with the performance and management agreement.

(6) The council shall have [reserves] the right to conduct on site monitoring of the project at any time during the term of the performance and maintenance agreement.

(7) Refund of funds disbursed. The council shall require a refund of grant assistance if an approved eligible plan has not been performed or the restored historic drylaid rock fences or historic mortared rock fences have not been maintained in compliance with approved standards of reconstruction or restoration as agreed in the performance and maintenance agreement.

(8)(a) Limitations on awards. Grant assistance awarded to an individual or for-profit entity shall be limited to fifty (50) percent of the actual cost, not to exceed an amount approved by the council, with the assisted applicant providing fifty (50) percent or more of

the cost, which may include federal, local, or in-kind support.

(b) Grant assistance awarded to a nonprofit entity shall be limited to sixty (60) percent of the actual cost, not to exceed an amount approved by the council, with the assisted applicant providing forty (40) percent or more of the cost, which may include federal, local, or in-kind support.

(9) Grant assistance shall not be awarded to projects in progress prior to execution of the performance and maintenance agreement.

Section 10. Appeals. (1) Procedure for filing appeal. An applicant aggrieved by a decision of the council to deny an application or limit the amount of grant assistance assurance may file written objections with the director within thirty (30) days of the decision establishing the basis for the appeal.

(a) The director shall notify the applicant within twenty (20) day, in accordance with KRS 13B.050, that the applicant may appear and present testimony or written documentation on the issues presented by the appeal.

(b) The director shall have thirty (30) days in which to make a decision and to notify the applicant.

(2) Review of final decision. The applicant may appeal the decisions of the director [may be appealed] to the Franklin Circuit Court.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Rock Fence Preservation Grant Application", (KHC Form RFPP-1, Rev. 2008), Kentucky Heritage Council;

(b) "Kentucky Rock Fence Preservation Grant Request for Reimbursement", (KHC Form RFPP-2, Rev. 2008), Kentucky Heritage Council;

(c) "Kentucky Rock Fence Preservation Performance and Maintenance Agreement", (KHC Form RFPP-3, Rev. 2008), Kentucky Heritage Council;

(d) "Special Note for Drylaid Rock Fences", (KHC Form RFPP-4, Rev. 2008).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Heritage Council, 300 Washington Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [9 a.m. to 4 p.m.]

DONNA M. NEARY, Executive Director

APPROVED BY AGENCY:

FILED WITH LRC: June 13, 2008 at 10 a.m.

CONTACT PERSON: Peggy D. Guier, Staff Attorney, Kentucky Heritage Council, 300 Washington Street, Frankfort, Kentucky 40601, phone (502) 564-7005, ext. 129, fax (502) 564-5280.

#### COMMERCE CABINET

Department of Fish and Wildlife Resources  
(As Amended at ARRS, August 12, 2008)

**301 KAR 1:140. Special commercial fishing permit for Kentucky and Barkley lakes.**

RELATES TO: KRS 150.010(32), 150.450(2), EO 2008-516

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to regulate the size or type of devices and methods used to take wildlife, including rough fish and the places where they may be taken. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the new Tourism, Arts and Heritage Cabinet. This administrative regulation is necessary to specify [legal commercial fishing waters and] restrictions on the use of gill and trammel nets.

Section 1. Definitions. (1) "Bar mesh size" means the distance between two (2) knots on a line of a net.

(2) "Immediate family" means the person's spouse, mother, father, grandparent, son, or daughter.

(3) "Permit" means a special commercial fishing permit.

(4) "Roe-bearing fish" means paddlefish, shovelnose stur-

geon, and bowfin ["Roe fish" is defined in 301 KAR 1:155].

(5) "Rough fish" is defined by KRS 150.010(32).

(6)[(5)] "Whip set" means a gill net or a trammel net rigged so it is free-floating.

Section 2. Permit Requirements. (1) A person shall possess a valid Kentucky commercial fishing license to obtain or retain a permit throughout the special commercial fishing season.

(2) For the 2008-2009 special commercial fishing season, the department shall not issue more than twenty-five (25) permits. [The department shall issue a permit only to a person who is eligible as specified in this section and had previously purchased a permit for the 2003 through 2005 special commercial fishing season.]

(3) For the 2007-2008 special commercial fishing season, the department shall not issue more than twenty-six (26) permits. Thereafter, the number of permits issued shall be reduced through attrition to a maximum of twenty-five (25).]

(a) A permit holder shall:

1. Submit a completed permit application to the department, along with permit fees as stipulated in 301 KAR 3:022, on or before November 1 to retain the[their] permit privilege; and

2. Ensure that mailed permit applications are [.. Mailed permit applications shall be] postmarked on or before November 1. [A permit holder shall purchase a permit annually to retain the privilege to purchase a permit in following years;]

(b) The ability to purchase a permit shall only be transferred to immediate family members.[:]

(c) New permits shall not be issued until the total number of permits has been reduced to less than twenty-five (25).[:]

(d) A lottery drawing shall be used to select new permittees once the number of permits has been reduced to less than twenty-five (25).

1. A person wishing to apply for a vacant permit shall:

a. Submit a completed Application for a Special Commercial Fishing Permit to the department, [an application] along with permit fees, as stipulated in 301 KAR 3:022, on or before November 1 [to the department prior to October 1] of the fishing season to be included in the lottery drawing; and

b. Ensure that mailed permit applications are[. Permit applications mailed to the department shall be] postmarked on or before November 1.

2. [No] More than seven (7) of the maximum number of permits issued shall not be nonresident permits.

Section 3. A person shall have in [who has in his or her] possession a valid permit and a commercial fishing license while using [may use] a gill net or a trammel net to take rough fish:

(1) From November 1 through March 31 at both Kentucky and Barkley lakes; and[:]

(2) In the portions of Kentucky and Barkley lakes open to commercial fishing as specified in 301 KAR 1:150.

Section 4. A person using a gill net or a trammel net in the waters specified in Section 3 of this administrative regulation shall:

(1) Before fishing[:] and after meeting requirements in Section 2 of this administrative regulation, apply for a permit by submitting a completed Application for a Special Commercial Fishing Permit that shall be provided by the department;[:]

(2) Have the permit in [his or her] possession while:

(a) Fishing with a gill net or a trammel net;

(b) Transporting a gill net or a trammel net; or

(c) Selling fish taken with a gill net or a trammel net;

(3) Tag a gill net or a trammel net as specified in KRS 150.175(4)[150.475(1)(d)];

(4) Not use a gill net or a trammel net with a bar mesh size smaller than three and five-tenths (3.5) [one-half (3-1/2)] inches or larger than four and five-tenths (4.5) [one-half (4-1/2)] inches, except:

(a) A whip set may have a minimum bar mesh size of three (3) inches; and

(b) Beginning on November 15 and running through March 31 at both Kentucky and Barkley lakes, gill and trammel nets with a bar mesh size larger than [from] four and five-tenths (4.5), but less than or equal to [one-half (4-1/2)-to] six (6) inches may be used in

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stationary sets only;[;];

(5) Not fish a stationary set net with the top of the net or float line shallower than three (3) feet below the surface;

(6) Tend each net, except whip sets, at least once every twenty-four (24) hours;

(7) Not leave whip sets unattended;

(8) Affix a decal supplied by the department to each side of the boat or motor used [he uses] for fishing under this permit so that the decal is clearly visible while [the boat is used for] fishing with a gill net or a trammel net;

(9) Not dispose of any commercially caught rough fish at public boat launch areas; and

(10) Not harvest paddlefish at both Kentucky and Barkley lakes during the special commercial fishing season that are less than thirty-eight (38) inches, as measured from the beginning of the eye to the fork of the tail fin. [Adhere to the following minimum eye to fork length size limit for paddlefish

(a) From November 1, 2007 to March 31, 2008 at Kentucky and Barkley lakes the minimum eye to fork length size limit for paddlefish shall be thirty-seven (37) inches; and

(b) Thereafter, the minimum eye to fork length size limit for paddlefish at both Kentucky and Barkley lakes during the special commercial fishing season shall be thirty-eight (38) inches.]

Section 5. The permit holder may be accompanied by **two (2) unlicensed helpers**[one (1) unlicensed helper], who shall be:

(1) In the same boat with the permit holder while fishing with a gill net or a trammel net; or

(2) Accompanied by the permit holder while transporting or selling fish taken under the permit.

Section 6. The permit holder shall:

(1) Maintain an accurate record of daily fishing activity; and

(2) Submit a completed monthly report to the department by the tenth day of the following month on the Monthly Report of Commercial Fish Harvest in Kentucky form that is provided by the department.

Section 7. Paddlefish Harvest Requirements. (1) A person who possesses a valid permit shall be permitted to harvest paddlefish flesh or roe during the special commercial fishing season without the need to purchase a **Roe-bearing Fish Harvester's**[commercial roe fish harvester] Permit.

(2) A person who harvests paddlefish roe during the special commercial fishing season shall follow all commercial roe fish harvester permit reporting requirements as stipulated in 301 KAR 1:155, Section **4(4)(d)4. and 5(4)(7)**.

Section 8. Permit Revocation and Renewal.

(1) The department shall **suspend the permit of a person who fails to complete and submit to the department a Monthly Report of Commercial Fish Harvest or a Daily Commercial Roe Harvest Report for each transaction involving a buyer permittee by the following methods:**

(a) **The first time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive by mail a courtesy reminder letter.**

(b) **The second time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive a warning letter.**

(c) **The third and subsequent times during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the license or permit shall be suspended until all reports have been received.**

(2) **The department shall not renew the commercial fishing license or harvester's permit of a person who fails to complete and submit to the department all reports required by this administrative regulation.**

(3) **The department shall revoke or not renew the permit for a period of two (2) years, of a person**[revoke or not renew the permit for a period of two (2) years, of a person who fails to complete and submit to the department a Monthly Report of Com-

mercial Fish Harvest or a Daily Commercial Roe Harvest Report for each transaction involving a commercial roe dealer permittee or who has been convicted of a federal commercial fishing violation or] the following state violations involving commercial fishing:

(a) Use of illegal commercial fishing gear;

(b) **Knowingly placing**[Placement of] commercial fishing gear in a restricted area;

(c) Harvesting of prohibited species of fish;

(d) Commercially fishing, **as established by 301 KAR 1:150**, in waters not open to commercial fishing; or

(e) **Knowingly** nonreporting or falsifying[ef] commercial harvest data.

**(4)(2)** A person whose permit has been revoked or not renewed shall be eligible to enter the lottery drawing described in Section **2(2)(d)** of this administrative regulation following the revocation period only if a permit is available based on the twenty-five (25) permit restriction.

Section 9.[Section 8.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Application for a Special Commercial Fishing Permit, 2007;

(b) "Monthly Report of Commercial Fish Harvest in Kentucky", **2008; and**, 2007;[and]

(c) **"Daily Commercial Roe-Bearing Fish Harvester's Transaction Report", 2008.**[Roe Harvest Report, 2008; and

(d) **List of commercial fisherman who remain eligible to purchase a Special Commercial Fishing Permit for the 2008-2009 season, 2008.**] [List of commercial fishermen who purchased a special commercial fishing permit during the 2003 through 2005 fishing seasons.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK S. CRAMER, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARACHETA SPARROW, Secretary

APPROVED BY AGENCY: December 7, 2007

FILED WITH LRC: February 14, 2008 at 10 a.m.

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 441, fax (502) 564-9136.

COMMERCE CABINET

Department of Fish and Wildlife Resources  
(As Amended at ARRS, August 12, 2008)

301 KAR 1:146. Commercial fishing gear.

RELATES TO: KRS 150.010, 150.025, 150.120, 150.170, 150.175, 150.445, 150.450, 150.990, **EO 2008-516**

STATUTORY AUTHORITY: KRS[43A.350.] 150.025**(1)**

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 150.025(1)** authorizes the department to regulate, by administrative regulations, the size or type of devices and methods used to take wildlife, including rough fish and the places where they may be taken. **EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the new Tourism, Arts and Heritage Cabinet.** This administrative regulation is necessary to specify the legal methods that may be used by commercial fishermen to harvest rough fish. [It is necessary to accurately describe the gear allowed in commercial fishing so that the proper size and species of fish can be harvested, the sport fish populations are not adversely affected and perpetuation of the fishery resource is assured. This amendment is necessary to readjust the hoop net mesh size on the Ohio River for a two (2) year transition period.]

Section 1. Definitions. (1) "Bar mesh size" is defined by **301 KAR 1:140, Section 1(1)**[in 301 KAR 1:140].

(2) "Commercial gear tag" means a metal tag, provided by the department, that shall be attached to legal commercial fishing gear **as established**[stipulated] in this administrative regulation.

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(3) "Flag net" means a gill or trammel net that is anchored on one (1) end, while the other end of the net is unanchored, allowing this end of the gill or trammel net to float freely. [The functions of the various commercial fishing tags authorized under KRS 150.175 are consolidated into one (1) tag called "commercial gear tag" which shall serve as they each were designated in KRS 150.175, subsections (5), (6), (7) and (8).]

Section 2. All lines and mesh shall be made of linen, cotton or flexible synthetic fiber only. All mesh shall be measured by bar measure. This measure is the length of one (1) side of the square, or as measured between two (2) knots on the same line.]

Section 2. [Section 3.] The following gear is the only commercial gear that shall be used in commercial waters designated in 301 KAR 1:150 and under conditions described in 301 KAR 1:155 by appropriately licensed commercial fishermen:

(1) Hoop nets, wing nets, straight lead nets, or heart lead nets. [Hoop net, wing net, straight lead net, heart lead net.]

(a) A hoop net, wing net, straight net, or heart lead net shall have a minimum bar mesh size of three (3) inches, except in the Ohio River, the Mississippi River, and those portions of the Cumberland River below Barkley Dam and the Tennessee River below Kentucky Dam that are open to commercial fishing where the minimum bar mesh size shall be one (1) inch.

(b) Hoops may be any size, or shape, or material.

(c) Maximum length of each lead or wing shall be sixty (60) feet.

(d) Wings and leads shall[must] be constructed of multifilament natural or synthetic material only.

(e) Netting used for wings and leads shall be constructed of twine not[no] smaller than number six (#6) nylon or equivalent, having a breaking strength of fifty-five (55) pounds or greater.

(f) Wings and leads may be of knotted or knotless construction and shall have a bar mesh size not[no] larger than one (1) inch.

(g) Hoop nets, wing nets, straight lead nets, or heart lead nets shall be fished as individual nets.

(h) Wings or leads shall not be tied together so as to become continuous multiple net units.

(i)[(h)] Wings and leads shall be used only to lead fish into the hoop net.

(j)[(i)] One (1) commercial gear tag shall be attached to the first hoop of each net;[-]

(2) Gill nets or trammel nets. A gill net or trammel net: [Gill net or trammel net.]

(a) May be used only in the Ohio and Mississippi Rivers and permanent overflow lakes adjacent to the Ohio and Mississippi Rivers that may be accessed from either river by a boat during high flow conditions, except as prohibited on department Wildlife Management Areas in 301 KAR 4:050 and 301 KAR 4:020 [overflow lakes directly connected with each river] or as specified in 301 KAR 1:140.

1. The minimum bar mesh size to be used in the Mississippi River and its adjacent permanent overflow lakes shall be three (3) inches.

2. The minimum bar mesh size to be used in the Ohio River and its adjacent permanent overflow lakes shall be four (4) inches, except that from May 1[April 25] through October 31, a commercial fisherman shall only use gill or trammel nets with a bar mesh size ranging from four (4) to four and five-tenths (4.5) inches;[-] [Minimum mesh size is three (3) inches in the Mississippi and its overflow lakes and four (4) inches in the Ohio River and its overflow lakes.]

(b) May be fished weighted or as a flag net; and[-]

(c) Shall have one (1) commercial gear tag attached to each 100 feet or part thereof;[-]

(3) Commercial trotlines. A commercial trotline: [Commercial trotline.]

(a) Shall have more than fifty (50) hooks placed not[no] closer than eighteen (18) inches apart;[-]

(b) Shall have one (1) commercial gear tag attached; and[-]

(c) Shall not be[no] longer than 3,000 feet, including staging, and shall be fished separately, not tied together in a continuous line;[-]

(4) Seines. A seine:[Seine-]

(a) Shall have:

1. A maximum bar mesh size of one (1) inch and may be of knotted or knotless construction; and

2.[-] Knotted netting shall be constructed of twine not[no] smaller than number 6 (#6) nylon or equivalent having a breaking strength of fifty-five (55) pounds or greater, and knotless netting shall be constructed of twine not[no] smaller than #147 nylon or equivalent having a breaking strength of fifty (50) pounds or greater;[-]

(b) Shall be constructed of multifilament natural or synthetic material only;[-]

(c) Shall have both float and lead lines;[-]

(d) Shall have wood, fiberglass, or metal poles or brails attached at each end;[-]

(e) Shall be attended by persons pulling the seine[siene] by hand through the water for the entrapment of fish; and[-]

(f) Shall have one (1) commercial gear tag attached to each 100 feet or part thereof; and[-]

(5) Slat trap baskets. A slat trap basket:[basket.]

(a) Shall not have[no] wire or other mesh added to any part of trap;[-]

(b) Shall have at least two (2) openings left between slats not[no] smaller than one and one-fourth (1 1/4) inches wide in the catch portion of the trap. These openings shall not be restricted by cross-bracings to a length shorter than eight (8) inches;[-]

(c) Shall not be[no] larger than two (2) feet in diameter or square-end measure; and[-]

(d) Shall have one (1) commercial gear tag attached to opening ring or square.

MARK S. CRAMER, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETTA SPARROW, Secretary

APPROVED BY AGENCY: December 7, 2007

FILED WITH LRC: February 14, 2008 at 10 a.m.

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COMMERCE CABINET

Department of Fish and Wildlife Resources  
(As Amended at ARRS, August 12, 2008)

301 KAR 1:155. Commercial fishing requirements.

RELATES TO: KRS 150.010, 150.120, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990, 217.015(20), EO 2008-516

STATUTORY AUTHORITY: KRS 150.025(1), (c), (h), 150.175(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.175(3) authorizes the Department of Fish and Wildlife Resources to protect certain rough fishes as designated by administrative regulation. KRS 150.025(1)(c) and (h) authorizes the department to control, by administrative regulation, the buying, selling, and transporting of wildlife. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the new Tourism, Arts and Heritage Cabinet. This administrative regulation establishes paddlefish, shovel-nose sturgeon, and bowfin as protected species and regulates the selling and buying of these roe-bearing species of rough fish.[150.025(1) authorizes the department to promulgate administrative regulations governing the methods and devices used to take wildlife, as well as the buying and selling of wildlife. The function of this administrative regulation is to regulate the taking of fish for commercial use, to avoid conflicts with other interests, and to utilize and conserve these fish populations.]

Section 1. Definitions. (1) "Buyer's permit" means a Roe-bearing Fish Buyer's Permit.

(2) "Closed areas" means all waters not listed in 301 KAR 1:150 as being open to commercial fishing.

(3) "Commercial fisherman" means a person holding a

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valid resident or nonresident commercial fishing license.

(4) "Commercial fishing gear" means the equipment described in 301 KAR 1:146.

(5) "Harvester's permit" means a Roe-bearing Fish Harvester's Permit.

(6) "Overflow lake" means a permanent or temporary body of water that receives overflow flood waters from an adjacent stream.

(7) "Restricted areas" means within fifty (50) yards of the outlet or inlet of an overflow lake or within fifty (50) yards of the mouth of a stream, except the mouth of the Ohio River as established in this administrative regulation, or within 200 yards of dams as established in KRS 150.445.

(8) "Roe-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin, regardless of the sex of the fish or the presence or absence of roe.

(9) "Roe-bearing Fish Buyer's Permit" means a permit issued by the Department of Fish and Wildlife Resources that entitles the permittee to buy roe-bearing species or roe in accordance with this administrative regulation.

(10) "Roe-bearing Fish Harvester's Permit" means a permit issued by the Department of Fish and Wildlife Resources to a licensed commercial fisherman that entitles the permittee to harvest and sell roe-bearing species in accordance with this administrative regulation.

(11) "Sport fish" means those species so designated by 301 KAR 1:060.

(12) "Unlicensed helper" means a person without a commercial fishing license who is assisting a commercial fisherman.

(13) "Unprocessed roe" means roe that has been removed from a roe-bearing fish by a food-processing plant, as defined by KRS 217.015(20), prior to its sale at a roe-bearing fish buyer's facility. ["Bar mesh size" is defined in 301 KAR 1:140.

(2) "Commercial fisherman" means a person holding a valid resident or nonresident commercial fishing license.

(3)[(2)] "Commercial fishing gear" means the equipment described in 301 KAR 1:146.

(4) "Dealer permit" means a commercial roe fish dealer permit.

(5) "Documented unlicensed helper" is the person listed as the unlicensed helper on the application for the commercial roe fish harvester permit for the purposes of transferability.

(6) "Harvester permit" means a commercial roe fish harvester permit.

(7)[(6)][(3)] "Overflow lake" means a permanent or temporary body of water that receives overflow flood waters from an adjacent stream.

(8)[(7)] "Roe fish" means paddlefish, shovelnose sturgeon, and bowfin.

(9) "Roe fish transportation card" means a card issued in the name of the harvester permittee that allows an unlicensed helper, with the card in possession, the ability to transport and sell legally caught roe fish or roe in the absence of the harvester permittee.

(10)[(8)][(4)] "Sport fish" means those species so designated by 301 KAR 1:060.

(11)[(9)][(5)] "Unlicensed helper" means a person without a commercial fishing license who is assisting a commercial fisherman.]

Section 2. Unlicensed Helpers. (1) A commercial fisherman shall not utilize more than two (2) unlicensed helpers~~one (1) unlicensed helper~~ while actively fishing.

(2) A commercial fisherman shall ensure that an unlicensed helper complies with all boating safety requirements established in KRS Chapter 235.

(3) An unlicensed helper shall be accompanied by a licensed commercial fisherman while using ~~not use~~ commercial fishing gear~~or selling fish~~, except that an unlicensed helper may legally transport or sell:

[(a) Roe fish to a roe fish dealer if the unlicensed helper possesses a valid roe fish transportation card; or

(b) Roe from a fish processing facility to a roe fish dealer if the unlicensed helper possesses a valid roe fish transportation card and a bill of lading.] ~~[sell fish unless he is accompanied by a li-~~

~~censed commercial fisherman].~~

Section 3. Tagging and Using Commercial Gear. A commercial fisherman shall:

(1) Tag commercial fishing gear so that a conservation officer is able to~~ean~~ find and read the commercial gear tag without undue difficulty;[-]

(2) Not use commercial fishing gear:

(a) Within fifty (50) yards of the outlet or inlet of an overflow lake; or

(b) Within fifty (50) yards of the mouth of a stream except the mouth of the Ohio River; ~~and~~[-]

(3) Not use commercial nets from April 1 through October 31:

(a) In bays and inlets of Kentucky or Barkley Lakes; or

(b) Within a distance of 200 yards from the mouth of bays or inlets in Kentucky or Barkley Lakes.

Section 4. Commercial Roe-bearing Fish Harvester's Permit. (1) For the 2008 commercial fishing season:

(a) The department shall sell roe-bearing fish harvester's permits between the dates of October 6, 2008 and November 5, 2008 only to:

1. A resident of Kentucky who possesses a valid 2008 commercial fishing license; or

2. A person who possesses a valid nonresident 2008 commercial fishing license and previously:

a. Reported harvesting roe-bearing fish from March 1, 2006 to September 7, 2007; or

b. Purchased a shovelnose sturgeon permit for the 2006 - 2008 seasons;

(b) Initial permit applications.

1. An eligible licensed commercial fisherman shall submit to the department by November 5, 2008, a completed Application for a Roe-bearing Fish Harvester's Permit along with permit fees as established in 301 KAR 3:022.

2. Mailed applications shall be postmarked not later than November 5, 2008; and

(c) The number of harvester's permits sold after the 2008 season shall not exceed 120 percent of the total number of resident and nonresident harvester's permits sold in 2008.

(2) Beginning with the 2009 commercial fishing season:

(a) The number of resident permits available shall be 120 percent of the resident permits sold in 2008.

(b) The number of nonresident permits available shall be 120 percent of the nonresident permits sold in 2008.

(c) A permittee wishing to renew a harvester's permit shall:

1. Possess a valid commercial fishing license and submit to the department by September 15, a completed Application for a Roe-bearing Fish Harvester's Permit along with permit fees as established in 301 KAR 3:022; and

2. Mailed applications postmarked by September 15.

(d) A harvester permittee shall be eligible to transfer permit privileges to an immediate family member, or to an unlicensed helper who has been employed by the permittee for a period of at least one (1) year in that capacity and who complies with the requirements of this administrative regulation.

1. The harvester permittee shall send to the department a notarized letter documenting the name and relationship of the transferee and documents showing employment for a period of one (1) year for an unlicensed helper.

2. Transferability shall be voided if a commercial fishing license or harvester's permit is revoked or suspended as established in Section 11 of this administrative regulation; and

(e) If the number of either resident or nonresident harvester's applications is lower than the number issued in 2008, the unfilled permits shall be available using methods described in subsection (3) of this section.

(3) Lottery drawings for resident and nonresident harvester's permits.

(a) Harvester's permits shall not be sold to a resident of a state that will not sell a nonresident harvester's permit, or its equivalent, to a Kentucky resident.

(b) Unfilled harvester's permits.

1. A person wishing to apply for an unfilled resident or

nonresident harvester's permit in the lottery drawings shall submit a completed Application for a Roe-bearing Fish Harvester's Permit to the department, by September 15, along with permit fees as established in 301 KAR 3:022.

2. Mailed applications shall be postmarked by September 15.

(c) A person chosen in the lottery drawing for an unfilled harvester's permit shall obtain a valid commercial fishing license prior to obtaining the harvester's permit.

(d) If a person is not chosen in the lottery drawing, permit fees shall be returned.

(e) If the department receives fewer resident or nonresident harvester's permit applications than the number of available permits, then those unused permits shall carry over to the next year.

(4) Roe-bearing fish harvester's permit requirements.

(a) A harvester's permit shall be required for a licensed commercial fisherman to harvest, transport, or sell roe fish or unprocessed roe.

(b) A harvester's permit shall not be required for a special commercial fishing permittee to harvest and sell roe-bearing fish flesh or unprocessed roe from Kentucky and Barkley lakes during the special commercial fishing season, as established in 301 KAR 1:140.

(c) A harvester's permit shall not be issued unless all monthly reports, as established in this Section and Section 10 of this administrative regulation, have been completed and submitted to the department.

(d) A harvester permittee shall:

1. Have the harvester's permit in possession while:

a. Fishing for roe-bearing fish; and

b. Transporting or selling roe-bearing fish or unprocessed roe;

2. Only sell, ship, barter, or provide harvested roe from roe-bearing fish to a Kentucky permitted buyer as established in Section 5 of this administrative regulation;

3. Possess a valid bill of lading if transporting unprocessed roe to a Kentucky permitted buyer;

4. Complete a Daily Roe-bearing Fish Harvester's Transaction Report as follows:

a. Complete and submit a Daily Roe-bearing Fish Harvester's Transaction Report for each day that roe-bearing fish are harvested or are sold to a Kentucky permitted buyer; and

b. All Daily Roe-bearing Fish Harvester's Transaction Reports that are completed within a calendar month shall be submitted to the department by the tenth day of the following month; and

5. Complete and submit to the department a monthly report as established in Section 10 of this administrative regulation.

**Section 5. Buyer's Permit Requirements.** (1) Except as established in Section 4(4) of this administrative regulation, a buyer's permit shall be required to buy, sell, barter, receive, or ship unprocessed roe from roe-bearing fish harvested in Kentucky.

(2) A person shall apply for a buyer's permit by submitting a completed Application for Commercial Roe-bearing Fish Buyer's Permit along with permit fees, as established in 301 KAR 3:022, to the department.

(3) A buyer permittee shall:

(a) Not knowingly purchase illegally taken fish or unprocessed roe from any state;

(b) Have in possession a valid buyer's permit while purchasing, receiving, or transporting unprocessed roe;

(c) Maintain for a period of three (3) years an accurate record of all unprocessed roe purchased from roe fish harvested in Kentucky;

(d) Maintain for a period of three (3) years an accurate record of all unprocessed roe purchased from roe fish harvested in another state including:

1. Name, address, and telephone number of the seller;

2. License number of the seller; and

3. Number of pounds of unprocessed roe purchased;

(e) Submit a completed Monthly Commercial Roe-bearing Fish Buyer's Report to the department by the tenth day of the following month;

(f) Sign the Daily Roe-bearing Fish Harvester's Transaction Report for each transaction with a harvester permittee prior to purchasing or receiving unprocessed roe from the harvester permittee;

(g) Retain a copy of the Daily Roe-bearing Fish Harvester's Transaction Report for each transaction with a harvester permittee for a period of three (3) years; and

(h) Allow a conservation officer access to all records and reports, as established in this section, upon request, during normal business hours. [Harvester Permit [Requirements]. (1) For the 2008 commercial fishing season:

(a) The department shall sell harvester permits between the dates of July 15 and August 28, 2008 only to:

1. A resident of Kentucky who possesses a valid 2008 commercial fishing license; or

2. A person who possesses a valid nonresident 2008 commercial fishing license and previously:

a. Reported harvesting paddlefish roe or flesh from March 1, 2006 to September 7, 2007; or

b. Purchased a shovelnose sturgeon permit for the 2006-2007 season or 2007-2008 season;

(b) An eligible commercial fisherman as specified in this section shall submit a completed Application for Commercial Roe Fish Harvester Permit along with permit fees as stipulated in 301 KAR 3:022 to the department by August 28, 2008. Mailed applications shall be postmarked no later than August 28, 2008.

(c) The number of harvester permits sold after the 2008 season shall not exceed the number of resident and nonresident harvester permits sold in 2008.

(2) Beginning with the 2009 commercial fishing season:

(a) A person wishing to renew a harvester permit shall possess a valid commercial fishing license and submit a completed Application for Commercial Roe Fish Harvester Permit and permit fees as stipulated in 301 KAR 3:022 to the department by September 30. Mailed applications shall be postmarked by September 30.

(b) A harvester permittee shall be eligible to transfer permit privileges, prior to September 30, to an immediate family member or the documented unlicensed helper of the harvester permittee:

1. The harvester permittee shall send to the department, postmarked by September 30, a notarized letter documenting the name and relationship of the transferee;

2. Transferability shall be voided if a commercial fishing license or harvester permit is revoked or pending revocation as specified in Section 11 of this administrative regulation.

(c) If the number of either resident or nonresident harvester permit applications are lower than the number issued in 2008, the unfilled permits shall be available using methods described in subsection (3) of this section.

(3) Lottery drawings for resident and non-resident harvester permits:

(a) Harvester permits shall not be sold to a resident of a state that will not sell a nonresident roe permit to a Kentucky resident;

(b) A person wishing to apply for an unfilled resident or nonresident harvester permit in the lottery drawings shall submit a completed Application for Commercial Roe Fish Harvester Permit to the department, along with permit fees as stipulated in 301 KAR 3:022 by September 30. Mailed applications shall be postmarked by September 30.

(c) A person chosen in the lottery drawing for an unfilled harvester permit shall obtain a valid commercial fishing license prior to obtaining the harvester permit.

(d) If a person is not chosen in the lottery drawing, permit fees will be returned.

(e) If the department receives fewer nonresident harvester permit applications than the number of available permits, then those unused permits shall convert to resident permits, and shall be placed in the resident harvester permit lottery drawing.

(f) Resident harvester permits not filled following the lottery drawing shall lapse, resulting in a permanent reduction in the total number of harvester permits available.

(4) Harvester permit requirements.

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(a) A harvester permit shall be required for a licensed commercial fisherman to harvest and sell roe fish or roe. A harvester permit shall not be required for a special commercial fishing permittee to harvest and sell paddlefish flesh or roe from Kentucky and Barkley lakes during the special commercial fishing season, as stipulated in 301 KAR 1:140.

(b) A harvester permit, as described in subsections (1) and (2) of this section, shall not be issued unless all monthly reports have been completed and submitted to the department as stipulated in Section (10) of this administrative regulation.

(c) A harvester permittee shall:

1. Have the harvester permit in possession while:

a. Fishing for roe fish; and

b. Transporting or selling roe fish or its roe.

2. Be issued a roe fish transportation card in the permit holder's name;

3. Only sell, ship, barter or provide harvested roe from roe fish to a Kentucky dealer permittee as stipulated in Section 5 of this administrative regulation;

4. Possess a valid bill of lading when transporting processed roe;

5. Complete a Daily Roe Harvester's Transaction Report for each day that roe fish are harvested or are sold to a Kentucky roe fish dealer. All Daily Roe Harvester's Transaction Reports that are completed within a calendar month must be submitted to the department by the tenth day of the following month;

6. Complete and submit to the department a monthly report as stipulated in Section 10 of this administrative regulation. [A harvester permit shall be required for a licensed commercial fisherman to harvest roe fish or its roe. A harvester permit shall not be required for a special commercial fishing permittee to harvest paddlefish flesh or roe from Kentucky and Barkley lakes during the special commercial fishing season, as stipulated in 301 KAR 1:140.

(2) A licensed commercial fisherman, who meets the eligibility requirements in this section shall apply for a harvester permit by submitting a completed Application for a Commercial Roe Fish Harvester Permit along with permit fees to the department, as stipulated in 301 KAR 3:022.

(3) The department shall issue a harvester permit only to a person who possesses a valid Kentucky commercial fishing license; and

(a) Reported paddlefish flesh or roe harvest in Kentucky from March 1, 2006 through September 7, 2007; or

(b) Possessed a shovelnose sturgeon permit from March 1, 2006 through September 7, 2007.

(4) For the harvester permit season, as stipulated in Section 6 of this administrative regulation, a commercial fisherman that is eligible to purchase a harvester permit shall purchase the harvester permit during the period from July 1, 2008 through September 30, 2008. The department shall use a lottery drawing to issue up to fifteen (15) additional harvester permits to new applicants who are currently not eligible to purchase a harvester permit, as stipulated in Section 4(3) of this administrative regulation.

(a) A person wishing to apply for a harvester permit in the lottery drawing shall submit a completed Application for a Commercial Roe Fish Harvester Permit along with permit fees to the department, as stipulated in 301 KAR 3:022, during the period from July 1, 2008 through September 30, 2008.

(b) The lottery drawing for the fifteen (15) additional permits shall be made on October 15, 2008.

(c) No more than three (3) of the fifteen (15) additional harvester permits shall be issued to nonresidents.

(d) Permit fees shall be returned if a person does not get chosen in the lottery drawing.

(5) The number of harvester permits issued by the department shall be capped for future years at the total number of harvester permits issued in 2008 from the process described in subsections (3) and (4) of this section. New harvester permits shall not be issued until the total number of harvester permits falls below the cap established in 2008.

(a) A lottery drawing shall be used to select new harvester permittees once the number of harvester permits issued has dropped below the cap established in 2008.

(b) Resident commercial fishermen shall be given first priority

in the lottery drawing process for a vacant resident or nonresident harvester permit.

(c) A person wishing to apply for a vacant harvester permit shall submit a completed Application for a Commercial Roe Fish Harvester Permit along with permit fees to the department, as stipulated in 301 KAR 3:022, on or before October 15 to be included in the lottery drawing. A harvester permit application mailed to the department shall be postmarked on or before October 15.

(6) A harvester permittee shall purchase a harvester permit annually by October 15 to retain their roe fish harvesting privilege. A harvester permit application mailed to the department shall be postmarked on or before October 15.

(a) A harvester permittee shall be eligible to transfer their permit privileges to an immediate family member or a documented unlicensed helper of the harvester permittee.

(b) A harvester permit transfer shall occur prior to the October 15 harvester permit season.

(c) Transferability shall be voided if a commercial fishing license or harvester permit is revoked or pending revocation as specified in Section 10 of this administrative regulation.

(7) A harvester permittee shall:

(a) Have the harvester permit in possession while:

1. Fishing for roe fish or its roe;

2. Transporting roe fish or its roe; and

3. Selling roe fish species or its roe.

(b) Only sell, ship, barter, or provide harvested roe from roe fish to a Kentucky dealer permittee as stipulated in Section 5 of this administrative regulation;

(c) Have in possession a valid bill of lading when transporting processed roe prior to a transaction with a permitted dealer;

(d) Complete a Daily Commercial Roe Harvest Report for each transaction with a permitted dealer and submit to the department within thirty (30) days of the date of the transaction; and

(e) Submit a completed Monthly Report of Commercial Fish Harvest in Kentucky, as stipulated in Section 10 of this administrative regulation to the department.]

Section 5. Dealer Permit Requirements. (1) A Kentucky dealer permit shall be required to buy, sell, barter, receive, or ship roe from roe fish harvested in Kentucky [by a person who possesses a valid Kentucky harvester permit or a special commercial fishing permit].

(2) A person shall apply for a dealer permit by submitting a completed Application for [a] Commercial Roe Fish Dealer Permit along with permit fees to the department, as stipulated in 301 KAR 3:022.

(3) A dealer permittee shall:

(a) Have in possession a valid dealer permit when purchasing, receiving, or transporting roe harvested from a permitted harvester;

(b) Maintain an accurate record of all roe purchased from roe fish harvested in Kentucky;

(c) Submit a completed Monthly Commercial Roe Dealer Report to the department by the tenth day of the following month;

(d) Sign the Daily [Commercial] Roe Harvester's Transaction[Harvest] Report for each transaction with a harvester permittee prior to purchasing or receiving roe from the licensed harvester permittee;

(e) Retain a copy of the Daily [Commercial] Roe Harvester's Transaction[Harvest] Report for each transaction with a harvester permittee for a period of three (3) years; and

(f) Allow a conservation officer to inspect his or her facilities for record keeping and other requirements stipulated in this administrative regulation.

Section 6. Commercial Fishing Season and Size Limits. (1) The commercial fishing season shall be open year round in the waters listed in 301 KAR 1:150 except for:

(a) Kentucky and Barkley lakes as described in 301 KAR 1:140;

(b) The shovelnose sturgeon (*Scaphirhynchus platyrhynchus*) season, which shall extend from October 15 through May 15; and

(c) The paddlefish (*Polyodon spathula*) season **which shall extend from:**

**1. November 1 through April 30 for all legal commercial**

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fishing gear as established by 301 KAR 1:146 generally in all waters open to commercial fishing, except Barkley and Kentucky Lakes, which seasons are established in 301 KAR 1:140; and

2. May 1 through May 31 for commercial trotlines only in all waters open to commercial fishing except the Ohio and Mississippi Rivers.[- which shall extend from November 1 through April 24.]

(2)[A commercial fisherman shall have in his or her possession a valid commercial fishing license and a commercial shovelnose sturgeon permit to possess shovelnose sturgeon and their eggs.

(3)] There shall not be[be no] size limits on any commercially-harvested rough fish except that a commercial fisherman shall only harvest:

(a) Shovelnose sturgeon between twenty-four (24) and thirty-two (32) inches, as measured from the tip of snout to the fork of the tail fin; and

(b) Paddlefish that are thirty-two (32) inches or greater, as measured from the beginning of the eye to the fork of the tail fin, except for Kentucky and Barkley lakes as specified in 301 KAR 1:140.

(3) A harvester or buyer permittee [or a special commercial fishing permittee] shall not possess:

(a) Unprocessed Paddlefish roe after June 5[for more than five (5) days after the close of the paddlefish season]; or

(b) Unprocessed Shovelnose sturgeon roe after May 20[for more than five (5) days after the close of the shovelnose sturgeon season].

[(4) A special net commercial fishing permittee shall not possess paddlefish roe for more than five (5) days after the close of the special net season on Kentucky and Barkley lakes as specified in 301 KAR 1:140][paddlefish or shovelnose sturgeon roe more than five (5) days after the closure of the paddlefish or shovelnose sturgeon commercial fishing season or the special commercial fishing season on Kentucky and Barkley lakes as specified in 301 KAR 1:140].

Section 7. [shovelnose sturgeon between twenty-four (24) and thirty-two (32) inches, as measured from tip of snout to the fork of the tail fin.

Section 5. Fish Species Ineligible for Commercial Harvest. (1) A commercial fisherman shall not take:

(a) Sport fish listed in 301 KAR 1:060;

(b) Pallid sturgeon (*Scaphirhynchus albus*), a federally-endangered species; or

(c) Lake sturgeon (*Acipenser fulvescens*).

(2) If a commercial fisherman [mistakenly] catches a fish listed in subsection (1) of this section, the fish shall be immediately returned [he shall immediately return the fish], without undue injury, to the waters where it was taken.

(3) A licensed commercial fisherman shall only sell roe-bearing fish or unprocessed roe from roe-bearing fish harvested by commercial fishing methods established in and permitted by 301 KAR 1:146[not sell paddlefish or shovelnose sturgeon harvested by the following sport fishing methods:

(a) Hook and line in hand;

(b) Rod in hand;

(c) Jugging;

(d) Snagging; and

(e) Sport fishing trotlines.]

Section 8.[Section 6.] Tending Gear and Removing Fish. A commercial fisherman shall:

(1) Tend and remove the fish from:

(a) Baited hoop nets or slat traps at least every seventy-two (72) hours; and

(b) Other commercial fishing gear at least every twenty-four (24) hours;[-]

(2) Not possess eggs of any species of fish outside of the fish's body cavity while on the water or adjacent bank; and[-]

(3) Remove commercial fishing gear from the water when finished fishing.

Section 9. Roe Fish [Species] Egg Checking Methodology. A commercial fisherman may[shall be allowed to] use a ten (10) gauge needle to examine roe fish for the presence of eggs [as a legal egg checking methodology].

Section 10.[Section 7.] Reporting. [(1)] A commercial fisherman shall report to the department his or her monthly catch for all months licensed, including months the licensee did not fish, by the tenth day of the following month by completing a Monthly Report of Commercial Fish Harvest in Kentucky form provided by the department[his or her monthly catch for all months][that he or she was][licensed including those when the licensee did not fish to the department, by the tenth day of the following month, by completing a Monthly Report of Commercial Fish Harvest in Kentucky form that is provided by the department.]

[(2) The department shall not renew the license of a commercial fisherman who does not submit a completed Monthly Report of Commercial Fish Harvest in Kentucky form for each month that he or she was licensed, including any months when the licensee did not fish.]

Section 11.[Section 8.] License and Permit Suspension, Nonrenewal, and Revocation.

(1) The department shall suspend the commercial fishing license, harvester's permit, or buyer's permit, of a person who fails to complete and submit to the department any reports required by this administrative regulation by the following methods:

(a) The first time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive by mail a courtesy reminder letter.

(b) The second time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive a warning letter.

(c) The third and subsequent times during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the license or permit shall be suspended until all reports have been received.

(2) The department shall not renew the commercial fishing license or harvester's permit of a person who fails to complete and submit to the department all reports required by this administrative regulation.

(3) The department shall revoke the commercial fishing license or harvester's permit, for a period of two (2) years, of a person who has been convicted of a federal commercial fishing violation or the following state violations involving commercial fishing:

(a) Use of illegal commercial fishing gear;

(b) Knowingly placing commercial fishing gear in a restricted area;

(c) Harvesting of prohibited species of fish;

(d) Commercially fishing in waters not open to commercial fishing as established by 301 KAR 1:150; or

(e) Knowingly falsifying commercial harvest data.

(4) The department shall revoke the buyer's permit, for a period of two (2) years, of a person who:

(a) Has been convicted of a federal commercial fishing violation; or

(b) Has falsified data on the Monthly Commercial Roe-bearing Fish Buyer's Report.

(5) An individual whose permit or license has been denied, suspended, not renewed, or revoked may request an administrative hearing pursuant to KRS Chapter 13B.[License and Permit Revocation and Nonrenewal. (1) The department shall not renew the commercial fishing license, harvester permit, or dealer permit of a person who fails to complete and submit to the department any reports required by this regulation.

(2) The department shall revoke the commercial fishing license or harvester permit, for a period of two (2) years, of a person who has been convicted of a federal commercial fishing violation or the following state violations involving commercial fishing:

(a) [The department shall revoke or not renew the commercial



fishing license, harvester permit, or dealer permit for a period of two (2) years of a person who fails to complete and submit to the department a Monthly Commercial Roe Dealer Report, a Monthly Report of Commercial Fish Harvest in Kentucky, or a Daily Commercial Roe Harvest Report for each transaction involving a commercial roe dealer permittee or who [that] [has been convicted of a federal commercial fishing violation or the following state violations involving commercial fishing:

- (1) [(1)] Use of illegal commercial gear;
  - (b) [(2)] Placement of commercial fishing gear in a restricted area;
  - (c) [(3)] Harvesting of prohibited species of fish;
  - (d) [(4)] Commercially fishing in waters not open to commercial fishing; or
  - (e) [(5)] Nonreporting or falsifying of commercial harvest data.
- (3) The department shall revoke the dealers permit, for a period of two (2) years, of a person who:
- (a) Has been convicted of a federal commercial fishing violation;
  - or
  - (b) Has not reported or has falsified data on the Monthly Commercial Roe Dealer Report;
  - (4) An individual whose permit or license has been denied, revoked or not renewed may request an administrative hearing pursuant to KRS Chapter 13B.]

Section 12.[9.] **Boundaries. The department shall make available on its Web site at [www.kdfr.state.ky.us](http://www.kdfr.state.ky.us) Global Positioning System (GPS) coordinates detailing the boundary with Ohio, on the Ohio River, for download to personal devices.**

**Section 13.** Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for [a] Commercial **Roe-bearing Fish Harvester's**[Roe-Fish Dealer] Permit", 2008;
- (b) "Application for [a] Commercial **Roe-bearing Fish Buyer's**[Roe-Fish Harvester] Permit", 2008;
- (c) "Daily **Roe-bearing Fish**[Commercial][Roe] Harvester's Transaction[Harvest] Report", 2008;
- (d) List of commercial fishermen who purchased a commercial fishing license and reported harvesting paddlefish flesh or roe in Kentucky from March 1, 2006 through September 7, 2007;
- (e) List of commercial fishermen who purchased a shovelnose sturgeon permit from March 1, 2006 through September 7, 2007;]
- (d) [(f)] "Monthly Commercial **Roe-Bearing Fish Buyer's**[Roe Dealer] Report", 2008;[and]
- (e) [(g)] "Monthly Report of Commercial Fish Harvest in Kentucky"; and
- (f) List of GPS coordinates for Ohio River Boundary with Ohio, 2008[2007]. [The Monthly Report of Commercial Fish Harvest in Kentucky, 2007, is incorporated by reference.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK S. CRAMER, Deputy Commissioner  
For DR. JONATHAN GASSETT, Commissioner  
MARCHETTA SPARROW, Secretary

APPROVED BY AGENCY: May 15, 2008

FILED WITH LRC: May 15, 2008 at noon

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, Ext. 441, fax (502) 564-9136.

**COMMERCE CABINET**  
**Department of Fish and Wildlife Resources**  
**(As Amended at ARRS, August 12, 2008)**

**301 KAR 3:022. License, tag, and permit fees.**

RELATES TO: KRS 150.025, 150.175, 150.180, 150.183, 150.240, 150.275, 150.280, 150.290, 150.450, 150.485, 150.520, 150.525, 150.600, 150.603, 150.620, 150.660, 150.720, **EO 2008-**

## 516

STATUTORY AUTHORITY: KRS 150.195(4)(f), 150.225, 150.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.225 authorizes the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.175 establishes the kinds of licenses and tags. This administrative regulation establishes fees and terms for licenses and the expiration dates for the licenses. **EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the new Tourism, Arts and Heritage Cabinet.**

Section 1. Licenses, tags, and permits listed in this section[subsection] shall be valid from March 1 through the last day of February the following year.

- (1) Sport fishing licenses:
  - (a) Statewide annual fishing license (resident): twenty (20) dollars;
  - (b) Statewide annual fishing license (nonresident): fifty (50) dollars;
  - (c) Joint statewide fishing license (resident): thirty-six (36) dollars; and
  - (d) Trout permit (resident or nonresident): ten (10) dollars.
- (2) Commercial fishing licenses:
  - (a) Commercial fishing license (resident) plus ten (10) resident commercial gear tags: \$150; and
  - (b) Commercial fishing license (nonresident) plus ten (10) non-resident commercial gear tags: \$600.
- (3) Commercial fishing gear tags (not to be sold singly):
  - (a) Commercial fishing gear tags (resident) block of ten (10) tags: fifteen (15) dollars; and
  - (b) Commercial fishing gear tags (nonresident) block of ten (10) tags: \$100.
- (4) [Commercial shovelnose sturgeon permit for resident and nonresident: \$500.
- (5) Hunting licenses:
  - (a) Statewide hunting license (resident): twenty (20) dollars;
  - (b) Statewide hunting license (nonresident): \$130;
  - (c) Statewide junior hunting license (resident or nonresident): five (5) dollars;
  - (d) Shooting preserve hunting license (resident or nonresident): five (5) dollars;
  - (e) Statewide waterfowl permit (resident or nonresident): fifteen (15) dollars; and
  - (f) [(e)] Migratory game bird permit (resident or nonresident): ten (10) dollars.
- (5) [(6)] Combination hunting and fishing license (resident): thirty (30) dollars.
- (6) [(7)] Senior/disabled combination hunting and fishing license (resident): five (5) dollars.
- (7) [(8)] Trapping licenses:
  - (a) Trapping license (resident): twenty (20) dollars;
  - (b) Trapping license (resident landowner/tenant): ten (10) dollars;
  - (c) Trapping license (nonresident): \$130; and
  - (d) Junior trapping license (resident): five (5) dollars.
- (8) [(9)] Game permits:
  - (a) Resident quota elk hunt permit: thirty (30) dollars;
  - (b) Nonresident quota elk hunt permit: \$365;
  - (c) Resident out-of-zone elk hunt permit: thirty (30) dollars;
  - (d) Nonresident out-of-zone elk hunt permit: \$365;
  - (e) Game permit, resident deer: thirty (30) dollars;
  - (f) Game permit, nonresident deer: sixty (60) dollars;
  - (g) Junior game permit, deer (resident or nonresident): ten (10) dollars;
  - (h) Bonus antlerless deer permit (two (2) tags per permit) (resident or nonresident): fifteen (15) dollars;
  - (i) Bonus quota hunt deer permit (resident or nonresident): thirty (30) dollars;
  - (j) Game permit, resident spring turkey: thirty (30) dollars;
  - (k) Game permit, nonresident spring turkey: sixty (60) dollars;

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- (l) Game permit, resident fall turkey: thirty (30) dollars;
- (m) Game permit, nonresident fall turkey: sixty (60) dollars; and
- (n) Junior game permit, turkey (resident or nonresident): ten (10) dollars.

~~(9) [(40)]~~ Peabody individual permit: fifteen (15) dollars.

~~(10) [(41)]~~ Commercial mussel licenses:

- (a) Musseling license (resident): \$400;
- (b) Musseling license (nonresident): \$1,600;
- (c) Mussel buyer's license (resident): \$600; and
- (d) Mussel buyer's license (nonresident): \$1,600.

~~(11) [(42)]~~ Sportsman's licenses (resident) (includes resident hunting and fishing combination, spring turkey permit, fall turkey permit, trout permit, state waterfowl permit and game permit for deer): ninety-five (95) dollars.

~~(12) [(43)]~~ Junior sportsman's license (resident or nonresident) (includes junior hunting license, junior deer permit, junior turkey permit, trout permit and waterfowl permit): twenty-five (25) dollars.

~~(13) [(44)]~~ Land Between the Lakes hunting permit: twenty (20) dollars.

~~(14) [(45)]~~ Conservation permit: five (5) dollars.

Section 2. Licenses, tags and permits, listed in this section~~[subsection]~~ shall be valid for the calendar year in which they are issued.

(1) Live fish and bait dealer's licenses:

(a) Live fish and bait dealer's license (resident): fifty (50) dollars; and

(b) Live fish and bait dealer's license (nonresident): \$150.

(2) Commercial taxidermist license: \$150.

(3) Commercial guide licenses:

(a) Commercial guide license (resident): \$150; and

(b) Commercial guide license (nonresident): \$400.

(4) Shooting preserve permit: \$150.

(5) Dog training area permit: fifty (50) dollars.

(6) Collecting permits:

(a) Educational wildlife collecting permit: twenty-five (25) dollars; and

(b) Scientific wildlife collecting permit: \$250.

(7) Nuisance wildlife control operators (NWCO) permit: \$100;

(8) Pay lake license:

(a) First two (2) acres or less: \$150; and

(b) Per additional acre or part of acre: twenty (20) dollars.

(9) Commercial captive wildlife permit: \$150.

(10) Commercial fish propagation permit: fifty (50) dollars.

(11) Wildlife rehabilitator's permit: twenty-five (25) dollars.

(12) Annual wildlife transportation permit: \$250; and

(13) Peabody Wildlife Management Area annual event permit: \$250.

Section 3. Licenses, tags and permits listed in this section~~[subsection]~~ shall be valid for three (3) years from the date of issue.

(1) Falconry permit: seventy-five (75) dollars.

(2) Noncommercial captive wildlife permit: seventy-five (75) dollars.

Section 4. Licenses, tags and permits listed in this section~~[subsection]~~ shall be valid for the date or dates specified on each.

(1) Short-term licenses:

(a) One (1) day resident fishing license: seven (7) dollars;

(b) One (1) day nonresident fishing license: ten (10) dollars;

(c) Seven (7) day nonresident fishing license: thirty (30) dollars;

(d) Fifteen (15) day nonresident fishing license: forty (40) dollars.

(e) One (1) day resident hunting license (not valid for deer, elk, or turkey hunting): seven (7) dollars.

(f) One (1) day nonresident hunting license (not valid for deer, elk, or turkey hunting): ten (10) dollars.

(g) Five (5) day nonresident hunting license (not valid for deer, elk, or turkey hunting): forty (40) dollars;

(h) Three (3) day fur bearer's license: fifty (50) dollars; and

(2) Individual wildlife transportation permit: twenty-five (25)

dollars.

(3) Special resident commercial fishing permit: \$600.

(4) Special non-resident commercial fishing permit: \$900.

(5) Commercial waterfowl shooting area permit: \$150.

(6) Shoot to retrieve field trial permits:

(a) Per trial (maximum four (4) days): seventy-five (75) dollars; and

(b) Single day: twenty-five (25) dollars.

(7) Boat dock permits (per year):

(a) Five (5) dollars through December 31, 2007; or

(b) \$100 per ten (10) year permit cycle beginning January 1, 2008.

(8) Peabody individual event permit: twenty-five (25) dollars.

~~(9) Commercial **Roe-bearing Fish Buyer's**[~~roe-dealer~~] permit;~~

~~(a) Commercial **Roe-bearing Fish Buyer's**[~~roe-dealer~~] permit (resident): \$500; and~~

~~(b) Commercial **Roe-bearing Fish Buyer's**[~~roe-dealer~~] permit (nonresident): \$1,000.~~

~~(10) Commercial **Roe-bearing Fish Harvester's**[~~roe-fish-harvester~~] permit;~~

~~(a) Commercial **Roe-bearing Fish Harvester's**[~~roe-fish-harvester~~] permit (resident): \$500; and~~

~~(b) Commercial **Roe-bearing Fish Harvester's**[~~roe-fish-harvester~~] permit (nonresident): \$1,500.~~

Section 5. Licenses, tags, and permits listed in this section~~[subsection]~~ shall be valid on a per unit basis as specified.

(1) Ballard waterfowl hunt (per person, per day): fifteen (15) dollars.

(2) Pheasant hunt permit (per person, per day): twenty-five (25) dollars.

(3) Horse stall rental (per space, per day): two (2) dollars.

(4) Dog kennel rental (per dog, per day): fifty (50) cents.

(5) Pond stocking fee (per stocking):

(a) Ponds less than 1.5 surface acres: seventy-five (75) dollars;

(b) Ponds from 1.5 to 2.9 surface acres: \$200; and

(c) Ponds equal to or greater than 3.0 surface acres: \$200 plus \$150 for each additional surface acre of water over 3.0 acres pro-rated on a 0.25 acre basis.

(6) Commercial captive cervid permit (per facility, per year): \$150.

(7) Noncommercial captive cervid permit (per facility; per three years): seventy-five (75) dollars.

Section 6. The following licenses listed in this section~~[subsection]~~ shall be valid from April 1 through March 31 of the following year:

(1) Fur processor's license (resident): \$150.

(2) Fur buyer's license (resident): fifty (50) dollars.

(3) Fur buyer's license (nonresident): \$300.

MARK S. CRAMER, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: December 7, 2007

FILED WITH LRC: February 14, 2008 at 10 a.m.

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, Ext. 441, fax (502) 564-0506.

**EDUCATION CABINET**  
**Kentucky Board of Education**  
**Department of Education**  
**(As Amended at ARRS, August 12, 2008)**

**702 KAR 3:270. SEEK funding formula.**

RELATES TO: KRS 156.035, 156.070, 157.320~~[(9)]~~, 157.360, 157.370, 157.390, 157.410, 157.430, 157.440, 157.615, 157.620(1)(a), 158.060(1), ~~[457.620,]~~ 158.135, 160.470, 160.476

STATUTORY AUTHORITY: KRS 156.035, 156.070, 156.160~~(1)(j)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.035 and 156.070 set forth the Kentucky Board of Education's plenary powers over the management and control of local school districts and disbursement of state appropriations. KRS 156.160(1)(i) requires the Kentucky Board of Education to promulgate administrative regulations for the preparation of budgets and salary schedules for the school districts under its management and control. ~~[KRS 157.320 defines average daily attendance. KRS 157.360 and 157.370 describe the Support Education Excellent in Kentucky (SEEK) base funding formula. KRS 157.410 sets forth the schedule of payments of SEEK funds to school districts. KRS 157.430 authorizes percentage reductions in SEEK allotments if insufficient funds are appropriated by the General Assembly. KRS 157.440 sets forth the requirements for state equalization for Tier I and the Facilities Support Program of Kentucky, exempts tax levies made for these programs from the hearing and recall provisions of KRS 160.470, authorizes districts to maintain the level of tax effort made in 1989-90. KRS 157.620 sets forth the requirements for school district participation in the School Facilities Construction Commission funding program. KRS 158.135 defines State Agency children. KRS 160.470 sets forth the required minimum local tax effort and defines equivalent tax rate. KRS 160.476 permits school districts to restrict funds for building purposes.]~~ This administrative regulation is necessary to provide guidelines for the calculations to distribute the funds to school districts through the program to Support Education Excellence in Kentucky (SEEK).

Section 1. Definitions. (1) "At-risk student amount" means fifteen (15) percent of the per pupil guaranteed base funding amount calculated pursuant to KRS 157.360(4) times the sum of the average daily membership of students approved [of the highest number of approved applications] for free meals [in each of the eight (8) months (September through May excluding December) of the prior fiscal year and [times] the number of state agency children served pursuant to KRS 158.135.

(2) "Calculated base SEEK funding" means the guaranteed base funding provided in the biennial budget pursuant to KRS 157.360(1) plus the add-on components of the SEEK calculation including at-risk, home and hospital, students with disabilities [exceptional children] and transportation pursuant to [per] KRS 157.390(5)[157.360(2)] and the add-on calculation for students with Limited English Proficiency.

(3) "Collection rate" means the tax receipts collected for the prior year divided by the maximum revenue collectible. ~~[The maximum revenue collectible shall be the prior year's permissive tax revenue plus the levied rates per \$100 of assessed value for real and tangible property and motor vehicles times the prior year assessment of real and tangible property and motor vehicles.]~~

(4) ~~["Debt service outstanding" means the amount of debt service in excess of eighty (80) percent of the allotment for the capital outlay component of SEEK plus the local revenue generated by the five (5) cent equivalent tax levy required to participate in the Facilities Support Program of Kentucky under KRS 157.620(1)(a).~~

(5) "Exceptional child amount" means the December 1 exceptional child count of the preceding fiscal year by exceptionality weighted as follows:

(a) 2.35 times the per pupil base funding amount calculated pursuant to KRS 157.360(1) for students with severe disabilities;

(b) 1.17 times the per pupil base funding amount calculated pursuant to KRS 157.360(1) for students with moderate disabilities; and

(c) .24 times the per pupil base funding amount calculated pursuant to KRS 157.360(1) for students with communications disabilities.

(5) [(6)] "Growth" means the percent change in the second month average daily attendance times the prior year adjusted average daily attendance pursuant to KRS 157.360(8).

(6) ~~["LEP" means Limited English Proficiency.~~

(7) "Home and hospital instruction amount" means the total of the prior year's home and hospital average daily attendance times the per pupil base funding amount calculated pursuant to KRS 157.360(1), less the allotment for capital outlay as set forth in the biennial budget.

**(7) "LEP" means a student with Limited English Proficiency,**

**as defined in 703 KAR 5:001, Section 1(52).**

(8) "Levied equivalent tax rate" means estimated permissive tax revenue plus the current year's levied real estate tax rate, tangible tax rate and motor vehicle tax rate per \$100 of assessed value times the current year's assessment of real estate, tangible property and motor vehicles times the prior year's collection rate divided by the total current year's property and motor vehicle assessment.

(9) **"Maximum revenue collectible" means the figure determined by multiplying the sum of the respective yields of the prior year levied rates by the prior year assessed values of real estate, tangible property and motor vehicles, and then adding the result to the prior year's permissive tax revenue.**

(10) "Net General Fund SEEK" means Total State SEEK minus any allocation for Capital Outlay.

(11) [(10)] "Partial Day" means a day containing less time than a regular school day which a student attends on a regular basis as approved by the local board of education. [(9) "Release time" means regularly scheduled time missed by students with school district approval.

(10) "Shared time average daily attendance" means the average daily attendance for nonresident students who attend the district's schools on a part-time basis while enrolled in another district or nonpublic school.]

(12) [(11)] "State equalization amount" means 150 percent of the statewide average per pupil property assessment as provided in the biennial budget.

(13) [(12)] "Tier I revenue" means revenue produced by a school district tax levy which, when equalized by state funds with the state equalization amount established by KRS 157.440(1)(a), generates up to the maximum revenue allowable under KRS 157.440(1)(a).

(14) [(13)] "Tier II revenue" means revenue produced by a school district tax levy above the Tier I tax levy which generates no more than the maximum revenue allowable under KRS 157.440(2).

(14) "Transportation funding" means prior fiscal year calculated transportation costs for students in grades primary through twelve (12) transported by school districts as calculated [by the Division of Pupil Transportation, Department of Education,] pursuant to KRS 157.370 and 702 KAR 5:020 adjusted by current year second month growth in transported students.

[(15) "Vocational educational deduct" means a deduct factor to be applied against the per pupil guaranteed base funding in those instances where a student spends a portion of the school day at a state-operated vocational center.]

Section 2. SEEK Calculation Formula. (1) Required data for the SEEK calculation shall include:

(a) Property assessments from the Department of [Property Taxation,] Revenue [Cabinet] provided pursuant to KRS 160.470(5);

(b) Tax rates levied by school districts;

(c) Equivalent tax rates based on tax levies;

(d) Home and hospital average daily attendance reported on the Superintendent's Annual Attendance Report (SAAR) [by the Pupil Attendance Branch, Division of Finance, Department of Education];

(e) Prior year adjusted average daily attendance (AADA) reported on the SAAR [by the Pupil Attendance Branch, Division of Finance, Department of Education] (calculated according to the formula in subsection (4) [(3)] of this section);

(f) The growth factor report [from the Pupil Attendance Branch, Division of Finance, Department of Education];

(g) Transportation funding calculated pursuant to KRS 157.370 and 702 KAR 5:020 [reported by the Division of Pupil Transportation, Department of Education];

(h) The prior year average daily membership of students approved for free lunch [number of at-risk students] reported through the student information system [by the Division of School and Community Nutrition, Department of Education];

(i) The number of exceptional students ages five (5) through twenty (20) in each disability category on December 1 of each year as reported through the student information system [by the Division of Exceptional Children Services, Department of Education];

(j) The number of LEP students as reported through the student information system [Vocational education average daily attendance reported by the Pupil Attendance Branch, Division of Finance, Department of Education]; and

(k) The state equalization amount as provided in the biennial budget.

(2) Assumptions used in the SEEK calculation shall include:

(a) Equivalent tax rates (ETR) shall be the lower of the ETR levied in the prior odd numbered year under KRS 157.440(1)(a) and the current year; and

(b) [Adjusted average daily attendance (AADA) plus growth shall be the prior year AADA plus the second month's percent attendance growth times prior year AADA; and

(c) Percentage reduction in the allotments may be made to at-risk student, exceptional child, LEP, and home and hospital instruction amounts and to the state portion of Tier I funding and to transportation funding due to appropriations in the biennial budget.

[(3) If the current year ADA for the school month as defined by KRS 158.060(1) which contains the most days in January exceeds the prior year AADA plus growth by three (3) percent, provided the difference is at least 100 students in ADA, the district may request a recalculation of its SEEK allotment by submitting an application to the Department of Education. Any adjustments in SEEK allotments approved pursuant to this provision shall be proportional to the remaining days in the school year and subject to available funds allocated for this purpose.]

(3)(4) AADA shall be calculated for students in grades primary through twelve (12) as follows:

(a) Average daily attendance (ADA) shall be calculated as required by the definition [as defined] in KRS 157.320(1) [shall be the aggregate days attendance as reported by local school districts divided by the number of school days taught as reported by local school districts].

(b) AADA shall be determined as follows:

1. Subtract the total of the following items from the ADA:

a. The ADA for noncontract, nonresident students as reported by local school districts;

b. One-half (1/2) of the total aggregate kindergarten days attendance divided by the number of days taught; and

c. The ADA for over-age students and under-age students not qualifying for funding pursuant to 702 KAR 7:125; and

2. Add the ADA for virtual school and performance based learning to the result of subparagraph 1 of this paragraph. [Adjusted average daily attendance shall be:

1. The ADA minus [plus];

2. The [shared time ADA as reported by local school districts minus;

3. The] [ADA for noncontract, nonresident students as reported by local school districts] [minus];

3.] [4. The release time as reported by local school districts minus;

5. [One-half (1/2) of the total aggregate kindergarten days attendance] [as reported by local school districts] [divided by the number of days taught] [minus]; and

4.] [6.] [The ADA for over-age students and under-age students not qualifying for funding pursuant to 702 KAR 7:125 plus] [as reported by local school districts].

(4)(5)(4) The SEEK calculation shall be determined as follows:

(a) Calculated base SEEK funding shall be determined as follows:

1. Multiply the sum of prior year AADA plus growth by the per pupil guaranteed base funding amount calculated pursuant to KRS 157.360(1).

2. Add the following items to the result of the calculation in subparagraph 1 of this paragraph:

a. The at-risk student amount;

b. The home and hospital instruction amount;

c. The exceptional child amount;

d. The transportation amount; and

e. The LEP student amount.:

1. The per pupil guaranteed base funding amount calculated pursuant to KRS 157.360(1) times;

2. The prior year AADA plus growth plus;

3. The at-risk student amount plus;

4. The exceptional child amount plus;

5. The home and hospital instruction amount plus;

6. The transportation funding plus;

7. The LEP student amount.;

(b) The calculated [total] state SEEK portion [base] shall be the calculated base SEEK funding minus the local effort required pursuant to KRS 157.390(5)[160.470(12)(a)]. [The value of real estate used in this calculation shall be the lesser of the current year assessment or the prior year assessment increased by four (4) percent plus the value of current year new property.]

(c) The total state SEEK funding amount shall be determined as follows:

1. Add the total of the following items to determine a subtotal

a. The Calculated State SEEK portion;

b. The total state Tier I funding, in accordance with subsection (6) of this section;

c. The hold harmless provision, if provided in the biennial budget; and

d. the pro rata adjustments under KRS 157.430, if any.

2. Apply prior year adjustments, if any, to the subtotal in subparagraph 1 of this paragraph.

[1. The calculated] [total] [state SEEK portion] [base] [plus;

2. The total state Tier I funding (in accordance with subsection (6) of this section) plus] [minus];

3. [The vocational education deduct amount (in accordance with subsection (7) of this section) plus;

4.] [The hold harmless provision if provided in the biennial budget plus;

4.][5.] [The prior year adjustments (if any) minus;

5.][6.] [The pro rata adjustments under KRS 157.430 (if any).]

(5)(a) The Calculated Base SEEK Funding used in determining Tier I tax rate and funding levels shall include the full value of all add-on items before application of any pro rata reductions.

(b) The maximum Tier I equivalent tax rate allowable pursuant to KRS 157.440(1) shall be determined as follows:

1. Multiply the per pupil Calculated Base SEEK Funding by fifteen (15) percent.

2. Divide the product of subparagraph a. of this paragraph by the greater of the state equalization amount and the local district per pupil assessment.

3. Add the required minimum equivalent tax rate under KRS 160.470 and KRS 157.620(1)(a) and any other equivalent tax rates restricted to the building fund as authorized by the General Assembly to the result of subparagraph b. of this paragraph. [(6)][(5)] [The formula for the maximum Tier I equivalent tax rate allowable per KRS 157.440(1)] [(a)] [shall be] [guaranteed base funding per KRS 157.360(1)]:

[(a) The calculated] [guaranteed] [Base SEEK Funding times] [amount calculated pursuant to KRS 157.360(1) plus];:

[(b) The calculated at-risk, exceptional child, home and hospital, and transportation amounts times;]

[(b)][(c)] [Fifteen (15) percent divided by;

(c)][(d)] [The greater of the state equalization amount and the local district per pupil assessment.];

(6)[(7)][(6)] State Tier I [and Tier II] funding formula [formulas].

(a) For local districts which have levied at or above the maximum Tier I equivalent tax rate under KRS 157.440(1)(a), the state Tier I funding formula shall be determined as follows:

1. Calculate the total Tier I revenue by multiplying the total Calculated Base SEEK Funding pursuant to KRS 157.360 times the maximum Tier I participation of fifteen (15) percent pursuant to KRS 157.440(1)(a).

2. Calculate the total per pupil Tier I revenue by dividing the total Tier I revenue by the sum of the prior year AADA plus growth.

3. Calculate the per pupil local portion Tier I funding by dividing the local district per pupil assessment by the state equalization amount and multiplying the result by the total per pupil Tier I revenue.

4. Calculate the state portion per pupil Tier I funding by subtracting the per pupil local portion Tier I funding from the

total per pupil Tier I revenue.

**5. The total state Tier I funding shall be determined as follows:**

**a. Multiply the state portion per pupil Tier I funding by the sum of the prior year AADA plus growth.**

**b. Subtract any pro rata adjustments due to appropriation in the biennial budget from the product of subparagraph a. of this paragraph.**

[1. The total Tier I revenue shall be the total calculated base SEEK funding pursuant to KRS 157.360 times the maximum Tier I participation of fifteen (15) percent pursuant to KRS 157.440(1)(a);

2. The total per pupil Tier I revenue shall be the total Tier I revenue divided by the prior year AADA plus growth;

3. The state portion per pupil Tier I funding shall be the total per pupil Tier I revenue minus the per pupil local portion Tier I (school district's per pupil assessment divided by the state equalization amount times total per pupil Tier I revenue);

4. The total state Tier I funding shall be:

a. The state portion per pupil Tier I funding times;

b. The prior year AADA plus growth minus;

c. The pro rata adjustments due to appropriation in the biennial budget.]

(b) For local districts which have not levied at or above the maximum Tier I equivalent tax rate under KRS 157.440(1)(a), the state Tier I funding formula shall be **determined** as follows:

**1. Calculate the levied Tier I equivalent tax rate by subtracting the following items from the levied equivalent tax rate:**

**a. The required minimum equivalent tax rate under KRS 160.470 and KRS 157.620(1)(a); and**

**b. Other equivalent tax rates restricted to the building fund as authorized by the General Assembly.**

**2. Calculate the per pupil total Tier I revenue by multiplying the levied Tier I equivalent tax rate times the state equalization amount.**

**3. Calculate the per pupil local portion Tier I funding by dividing the local district per pupil assessment by the state equalization amount and multiplying the result by the total per pupil Tier I revenue.**

**4. Calculate the state portion per pupil Tier I funding by subtracting the per pupil local portion Tier I funding from the per pupil total Tier I revenue.**

**5. The total state Tier I funding shall be determined as follows:**

**a. Multiply the state portion per pupil Tier I funding by the sum of the prior year AADA plus growth.**

**b. Subtract any pro rata adjustments due to appropriation in the biennial budget from the product of subparagraph a. of this paragraph.**

[The levied Tier I equivalent tax rate shall be the levied equivalent tax rate minus the required minimum] [thirty (30) cents] [equivalent tax rate under KRS 160.470][(12)(a)] [and] [five (5) cents levy under] [KRS 157.620(1)(a) and other equivalent tax rates restricted to the building fund as authorized by the General Assembly];

2. The per pupil total Tier I revenue shall be the levied Tier I equivalent tax rate times the state equalization amount;

3. The state portion per pupil Tier I funding shall be the per pupil total Tier I revenue minus the per pupil local portion Tier I (school district's per pupil assessment divided by the state equalization amount times total per pupil Tier I revenue);

4. The total state Tier I funding shall be:

a. The state portion per pupil Tier I funding times;

b. The prior year AADA plus growth minus;

c. The pro rata adjustments due to appropriation in the biennial budget.]

[(c) The Tier II local revenue (not subject to state equalization) shall be calculated as follows:

1. The levied equivalent tax rate minus;

2. The required minimum thirty (30) cents equivalent tax rate under KRS 160.470(12)(a), the five (5) cents levy under KRS 157.620(1)(a), and the maximum Tier I equivalent tax rate times;

3. The total district assessment of property and motor vehicles.

(7) The vocational education (voc ed) deduct formula shall be as follows:

(a) The per pupil deduct amount shall be:

1. The total state SEEK base divided by;

2. The calculated base SEEK funding times;

3. The per pupil guaranteed base funding amount calculated pursuant to KRS 157.360(1) times;

4. The voc ed deduct percentage as provided for in the biennial budget.

(b) The total voc ed deduct amount shall be the per pupil deduct amount times the voc ed ADA.]

Section 3. Calculation of State Equalization for the Facilities Support Program of Kentucky (FSPK) and Other Equalized Levies Restricted to the Building Fund [Calculation].

(1) Data required for the **state FSPK equalization** [FSPK calculation] formula shall include:

(a) Property assessments from the Department of [Property Taxation,] Revenue [Cabinet], as required by KRS 160.470(5);

(b) Equivalent tax rates based on tax levies from school districts;

(c) Prior year AADA **plus growth** [as reported by the Pupil Attendance Branch, Division of Finance, Department of Education]; **and**

(d) [Total annual debt service for school building revenue bonds; and

(e)] State equalization amount.

(2) [Assumptions used in the FSPK calculation shall include:

(a)] A school district shall not receive state equalization funds until the full [five (5) cent] equivalent tax required for participation has been levied.];

(b) A school district which has levied ~~the required~~ [a five (5) cent] [equivalent tax for building purposes under KRS 157.620][(1)(a)] [shall qualify to receive state equalization funding when the district's outstanding debt service as of October 1 of each odd-numbered year is within \$10,000 of the required amount; and

(c) A school district's eligibility for participation in the FSPK program shall be based on prior year AADA. State equalization funds shall be calculated based on prior year AADA plus growth.]

(3) The **state FSPK equalization amount** eligibility calculation shall be **determined** as follows:

[(a) The] [total] [revenue available for debt service shall be the amount generated by ~~the required~~] [a five (5) cent equivalent] [tax levy under KRS 157.440][(620(1)(a))].

(b) The debt service amount needed for equalization shall be the total revenue available for debt service minus the total current year debt service (from school district's outstanding school revenue bond issues);

(c) If the calculation in paragraph (b) of this subsection is a positive amount, the district shall not be eligible for equalization.

(4) Once a school district has been determined eligible for state FSPK funds, the state equalization calculation shall be as follows:]

**(a) The per pupil state FSPK equalization amount shall be determined as follows:**

**1. Calculate the maximum eligibility amount by multiplying the state equalization amount times the required tax levy under KRS 157.440.**

**2. Calculate the local effort by multiplying the per pupil assessment times the required equivalent tax levy under KRS 157.440.**

**3. Subtract the local effort from the maximum eligibility amount.**[The per pupil state equalization amount shall be the maximum eligibility amount (which is the state equalization amount times ~~the required tax levy under KRS 157.440~~[(.0005)] minus the local effort (which is the per pupil assessment times ~~the required equivalent tax levy under KRS 157.440~~[(.0005)]).]

(b) The[prorated] state FSPK **equalization** amount shall be **determined by multiplying the following three (3) items:**

**1. The per pupil state FSPK equalization amount;**

**2. The prior year AADA plus growth; and**

**3. The pro rata adjustments, if any, due to the appropriation in the biennial budget.**[1. The per pupil state equalization times;

2. The prior year AADA plus growth times;

3. The pro rata adjustments due to an appropriation in the

biennial budget.]

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

JON E. DRAUD, Commissioner

JOSEPH BROTHERS, Chairperson

APPROVED BY AGENCY: February 13, 2008

FILED WITH LRC: February 14, 2008 at 9 a.m.

CONTACT PERSON: Kevin M. Noland, Deputy Commissioner, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

# ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Department of Public Protection

Office of Insurance

Life Insurance Division

(As Amended at ARRS, August 12, 2008)

## 806 KAR 12:180. Military sales practices.

RELATES TO: KRS 304.1-040, 304.5-020, 304.5-030 304.9-020(7), 304.12-010, 304.12-030, 304.15-310, 12 C.F.R. 205, 230, 707, 10 U.S.C. 992, 12 U.S.C. 4301, 26 U.S.C. 401(a), (k), 403(b), 408(k), (p), 414, 457, 501(c)(23), 29 U.S.C. 1001, 38 U.S.C. 1965, Pub.L. 109-290[304.12-010, 304.12-030, 40 U.S.C. 992, 12 U.S.C. 4301 et seq., 26 U.S.C. 401(a), 26 U.S.C. 401(k), 26 U.S.C. 403(b), 26 U.S.C. 408(k) and 408(p), 26 U.S.C. 414; 26 U.S.C. 457, 26 U.S.C. 501(c)(23), 29 U.S.C. 1001 et seq., 38 U.S.C. 1965]

STATUTORY AUTHORITY: KRS 304.2-110, 304.12-257, 10 U.S.C. 992(9)[see 9](a)(2)

NECESSITY, FUNCTION AND CONFORMITY: KRS 304.12-257 authorizes the executive director to promulgate administrative regulations to protect service members of the United States Armed Forces from dishonest insurance marketing and sales practices. EO 2008-507, effective June 16, 2008, reorganized the Office of Insurance as the Department of Insurance and established the Commissioner of Insurance, rather than executive director, as head of the department.[304.2-110 authorizes the Executive Director of the Office of Insurance to promulgate administrative regulations necessary for the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304.]10 U.S.C. 992 sec 9(a)(2) requires the states to collectively work with the Secretary of Defense to ensure implementation of appropriate standards to protect members of the Armed Forces from dishonest and predatory insurance sales practices while on a military installation of the United States, and further requires each state to identify its role in promoting the standards in a uniform manner, not later than twelve (12) months after the date of enactment of the federal law. This administrative regulation sets forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair.

Section 1. Definitions. (1)(a) "Active duty" means full-time duty in the active military service of the United States and includes members of the reserve component, both the National Guard and Reserve, while serving under published orders for active duty or full-time training.

(b) "Active duty" does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than thirty-one (31) calendar days.

(2) "Annuity" is defined in KRS 304.5-030.

(3) "Commissioner" means the Commissioner of the Department of Insurance.

(4) "Department of Defense Personnel" means all active duty service members and all civilian employees, including nonappro-

priated fund employees and special government employees, of the Department of Defense.

(5)[(4)] "Door to door" means a solicitation or sales method in which[where] an insurance producer proceeds randomly or selectively from household to household without a prior specific appointment.

[(5) "Executive director" is defined in KRS 304.1-050(1).]

(6) "General advertisement" means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance producer.

(7) "Insurable needs" means the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate or survivors or dependents.

(8) "Insurer" is defined in KRS 304.1-040.

(9) "Insurance producer" is defined in KRS 304.9-020(7).

(10) "Known" or "knowingly" means the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known, when the act or practice complained of occurred, that the person solicited is a service member.

(11) "Life insurance" is defined in 304.5-020.

(12) "Military installation" means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

(13) "MyPay" means the Defense Finance and Accounting Service web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

(14) "Other military survivor benefits" mean the death gratuity, funeral reimbursement, transition assistance, survivor and dependents' educational assistance, dependency and indemnity compensation, TRICARE healthcare benefits, survivor housing benefits and allowances, federal income tax forgiveness, and social security survivor benefits.

(15) "SGLI" means the Servicemembers' Group Life Insurance as authorized by 38 U.S.C. section 1965[et seq].

(16) "Service member" means an active duty officer, both commissioned and warrant, or enlisted member of the United States Armed Forces.

(17)(a) "Side fund" means a fund or reserve that is part of or otherwise attached to a life insurance policy by rider, endorsement, or other mechanism which accumulates premium or deposits with interest or by other means.

(b) "Side fund" does not mean:

1. Accumulated value or cash value or secondary guarantees provided by a universal life policy;

2. Cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or

3. A premium deposit fund which:

a. [(i)] Contains only premiums paid in advance which accumulate at interest;

b. [(ii)] Imposes no penalty for withdrawal;

c. [(iii)] Does not permit funding beyond future required premiums;

d. [(iv)] Is not marketed or intended as an investment; and

e. [(v)] Does not carry a commission, either paid or calculated.

(18) "Specific appointment" means a prearranged appointment agreed upon by both parties and definite as to place and time.

(19) "United States Armed Forces" means all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(20) "VGLI" means the Veterans' Group Life Insurance, as authorized by 38 U.S.C. section 1965[et seq].

Section 2. Scope. This administration regulation shall apply only to the solicitation or sale of a life insurance policy or annuity by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

Section 3. Exemptions. (1) This administrative regulation shall not apply to solicitations or sales involving:

(a) Credit insurance;

(b) Group life insurance or group annuities if[where]

1. An in-person, face-to-face solicitation of individuals by an insurance producer is not made; or  
 2. The contract or certificate does not include a side fund;  
 (c) An application to the existing insurer that issued the existing policy or contract ~~if[when]~~:

1. A contractual change or a conversion privilege is being exercised;

2. The existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the ~~commissioner[executive director]~~; or

3. A term conversion privilege is exercised among corporate affiliates;~~[-]~~

(d) Individual stand-alone health policies, including disability income policies;

(e) Contracts offered by SGLI or VGLI;

(f) Life insurance contracts offered through or by a non-profit military association, qualifying under 26 U.S.C. 501(c) (23), and which are not underwritten by an insurer; or

(g) Contracts used to fund:

1. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act, 29 U.S.C. 1001~~[et seq.]~~;

2. A plan described by 26 U.S.C. 401(a), 401(k), 403(b), 26 U.S.C. 408(k) or 408(p), as amended, if established or maintained by an employer;

3. A government or church plan defined in 26 U.S.C. 414;

4. A government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under 26 U.S.C. 457;

5. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

6. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution or process; or

7. Prearranged funeral contracts.

(2) ~~[Nothing in]~~ This administrative regulation shall **not** be construed to abrogate the ability of a nonprofit organization or another organization to educate members of the United States Armed Forces in accordance with Department of Defense Instruction 1344.07, "Personal Commercial Solicitation on DoD Installations."

(3)(a) General advertisements, direct mail, and internet marketing shall not constitute solicitation.

(b) Telephone marketing shall not constitute solicitation if the caller:

1. Explicitly and conspicuously discloses that the product concerned is life insurance; and

2. Does not make a statement that avoids a clear and unequivocal statement that life insurance is the subject matter of the solicitation.

(c) ~~[Nothing in]~~ This subsection shall **not** be construed to exempt an insurer or insurance producer from the requirements of this administrative regulation in any in-person, face-to-face meeting established as a result of the exemptions identified in this subsection.

Section 4. Practices Declared False, Misleading, Deceptive or Unfair on a Military Installation. (1) The following acts or practices, ~~if[when]~~ committed on a military installation by an insurer or insurance producer, with respect to the in-person, face-to-face solicitation of life insurance shall be false, misleading, deceptive or unfair:

(a) Knowingly soliciting the purchase of any life insurance product;

1. Door to door; or

2. Without first establishing a specific appointment for each meeting with the prospective purchaser;

(b) Soliciting service members in a group or mass audience or in a captive audience where attendance is not voluntary;

(c) Knowingly making appointments with or soliciting service members during their normally scheduled duty hours;

(d) Making appointments with or soliciting service members in

1. Barracks;

2. Day rooms;

3. Unit areas;

4. Transient personnel housing; or

5. Other areas where the installation commander has prohibited solicitation;

(e) Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee;

(f) Posting unauthorized bulletins, notices, or advertisements;

(g) Failing to present Department of Defense Form 2885, "Personal Commercial Solicitation Evaluation," to service members solicited or encouraging service members solicited not to complete or submit a Department of Defense Form 2885; or

(h) Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer's files a completed copy of a required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives or rules of the Department of Defense or any branch of the Armed Forces.

(2) The following acts or practices ~~if[when]~~ committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences, or inducements and shall be false, misleading, deceptive, or unfair:

(a) Using Department of Defense personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members; and

(b) Using an insurance producer to participate in any United States Armed Forces sponsored education or orientation program.

Section 7. Practices Declared False, Misleading, Deceptive, or Unfair Regardless of Location.

(1) The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences, or inducements and shall be false, misleading, deceptive, or unfair:

(a)1. Submitting, processing, or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance including using or assisting in using a service member's "MyPay" account or other similar internet or electronic medium for those purposes;

2. This subsection does not prohibit assisting a service member by providing insurer or premium information necessary to complete an allotment form;

(b)1. Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member does not have a formal banking relationship;

2. For purposes of this section, a formal banking relationship is established ~~if[when]~~ the depository institution:

a. Provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. 4301 **and 12 C.F.R. 205, 230, and 707**~~[et seq. and the regulations promulgated thereunder]~~; and

b. Permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums;

(c) Employing a device or method or entering into an agreement ~~if[where]~~ funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's leave and earnings statement or equivalent or successor form as "savings" or "checking" and where the service member has no formal banking relationship;

(d) Entering into any agreement with a depository institution for the purpose of receiving funds from a service member ~~if[where]~~ the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship;

(e) Using Department of Defense personnel, directly or indirectly, as a representative or agent in an official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel;

(f) Offering or giving anything of value, directly or indirectly, to Department of Defense personnel to procure their assistance in encouraging, assisting, or facilitating the solicitation or sale of life

insurance to another service member;

(g) Knowingly offering or giving anything of value to a service member for ~~the member's~~<sup>his or her</sup> attendance ~~at~~<sup>to</sup> any event where an application for life insurance is solicited; or

(h) Advising a service member to change ~~the member's~~<sup>his or her</sup> income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

(2) The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval, or affiliation and shall be false, misleading, deceptive, or unfair:

(a)1. Making any representation, or using any device, title, descriptive name or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer, or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned, or recommended by the U.S. Government, the United States Armed Forces, or any state or federal agency or government entity;

2. ~~This section~~<sup>Nothing</sup> shall ~~not~~ be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning; or

(b) Soliciting the purchase of any life insurance product through the use of or in conjunction with a third party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer, or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government<sup>or</sup> the United States Armed Forces.

(3) The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, costs, or investment returns and shall be false, misleading, deceptive, or unfair:

(a) Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid; or

(b) Excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free."

(4) The following acts or practices by an insurer or insurance producer regarding SGLI or VGLI shall be false, misleading, deceptive, or unfair:

(a) Making any representation regarding the availability, suitability, amount, cost, exclusions or limitations to coverage provided to a service member or dependents by SGLI or VGLI, which is false, misleading, or deceptive;

(b) Making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading, or deceptive; or

(c) Suggesting, recommending, or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the United States Armed Forces.

(5) The following acts or practices by an insurer or insurance producer regarding disclosure shall be false, misleading, deceptive, or unfair:

(a) Deploying, using, or contracting for a lead generating material designed exclusively for use with service members that does not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance;

(b) Failing to disclose that a solicitation for the sale of life insurance will be made ~~if~~<sup>when</sup> establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser;

(c) Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance;

(d) Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the "Military Personnel Financial Services Protection

Act," Pub. L. No. 109-290, p.16; or

(e) Excluding individually issued annuities, ~~if~~<sup>when</sup> the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide the applicant ~~if~~<sup>when</sup> the application is taken:

1. An explanation of a free look period with instructions on how to cancel if a policy is issued; and

2. ~~a~~. A copy of the application; or

b. ~~i~~. A written disclosure.

~~ii~~. The copy of the application or the written disclosure shall set out the type of life insurance ~~and~~<sup>;</sup> the death benefit applied for and its expected first year cost. A basic illustration that meets the requirements of 806 KAR 12:140 shall be sufficient to meet this requirement for a written disclosure.

(6) The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products shall be false, misleading, deceptive, or unfair:

(a) Excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable;

(b) Offering for sale or selling a life insurance product which includes a side fund to a service member who is:

1. Currently enrolled in SGLI; and

2. Presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance;

(c) Excluding individually issued annuities, offering for sale or selling a life insurance contract that includes a side fund:

1. Unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

2. Unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product.

a. The effective rate of return shall consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage.

b. The schedule shall be provided for at least each policy year from one (1) to ten (10) and for every subsequent fifth policy year ending at age 100, policy maturity, or final expiration; and

3. That by default diverts or transfers funds accumulated in the side fund to pay, reduce, or offset any premiums due; or

(d) Excluding individually issued annuities, offering for sale or selling a life insurance contract that after considering all policy benefits, does not comply with KRS ~~304.15-310~~<sup>304.15-310</sup>.

Section 8. Incorporation by Reference. The following material is incorporated by reference:

(a) "Department of Defense Instruction Number 1344.07, Personal Commercial Solicitation on DoD Installations", (March 30, 2006); and

(b) "Department of Defense Form 2885, Personal Commercial Solicitation Evaluation", (April 2006).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the ~~Department~~<sup>Office</sup> of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JULIE MIX MCPEAK, Executive Director

TIMOTHY J. LEDONNE, Commissioner

LLOYD CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

APPROVED BY AGENCY: November 14, 2007

FILED WITH LRC: November 15, 2007 at 10 a.m.

CONTACT PERSON: DJ Wasson, Kentucky Office of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.



**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**  
**Department of Public Protection**  
**Office of Housing, Buildings and Construction**  
**Division of Building Code Enforcement**  
**(As Amended at ARRS, August 12, 2008)**

**815 KAR 7:070. The Kentucky Certified Building Inspector Program.**

RELATES TO: KRS 198B.040(3), 198B.050(3)(c), (6), 198B.090, 198B.095

STATUTORY AUTHORITY: KRS 198B.050(5), 198B.090(1)(a), EO 2008-507

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.090(1)(a) requires the office to create and administer a building inspector's certification program which is designed to ensure uniform statewide enforcement of applicable state building codes. EO 2008-507, effective June 16, 2008, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes the testing, training and continuing education requirements for qualifying persons to become inspectors for the enforcement of the Kentucky Building Code, and to identify the level of their responsibilities for this enforcement.

Section 1. Definitions. (1) "Certified building inspector" is defined by KRS 198B.010(6) means a person who has completed the orientation training and module testing requirements to be classified as a one (1) and two (2) family dwelling inspector, one (1) and two (2) family dwelling mechanical inspector, mechanical inspector general, mechanical inspector and plan reviewer, or a certified building inspector, level I, II, or III, as established in Section 5 of this administrative regulation, and who is qualified to issue building permits, review construction documents, issue compliance letters and certificates of occupancy and enforce the code for the type and size of buildings described by Section 5 of this administrative regulation].

(2) "Enrolled" means an applicant has complied with the requirements established in Section 4(1) of this administrative regulation.

(3) "Limited certificate" means a document establishing that a person:

(a) Has passed the test for competency in one (1) or more NCPCCI test modules; and

(b), and] Is qualified to engage in the type of limited inspections listed on the certificate which represents the level of competency for which the person was tested.

(4) "NCPCCI test module" means a test module, from the National Certification Program for Construction Code Inspectors, developed by the national code enforcement organizations for the purpose of providing nationally-recognized evidence of competency and professionalism in construction code enforcement and used to meet the module testing requirements established in Section 5 of this administrative regulation.

(5) "Trainee" means a person who is enrolled in the building inspector program of the department[office] but has not completed the NCPCCI test modules necessary to be a Kentucky certified building inspector.

Section 2. Inspection Operations. (1) Each governmental entity engaged in a building inspection program shall have, in responsible charge of all construction document approvals, inspections and issuance of certificates of occupancy, at least one (1) Kentucky certified building inspector with the level of credentials required for the buildings covered by the program.

(2) A trainee may be utilized in a building inspection program if the trainee operates under the general supervision of a Kentucky certified building inspector.

(a) Trainees shall not issue permits, construction document approval letters, inspection compliance letters or certificates of occupancy.

(b) A trainee holding a current limited certificate shall exercise

only the duties authorized by that certificate.

(c) A limited certificate shall not be available to persons who apply after March 22, 2001.

Section 3. Training and Testing Requirements to Become Certified. A candidate seeking certification shall comply with the provisions of this section.

(1) A candidate seeking to become certified pursuant to this administrative regulation and all trainees shall be required to attend orientation training, provided or approved by the department[office][department]. The training sessions shall be given quarterly.

(2) Continuing education.

(a) Continuing education programs shall be conducted by:

1. The department;

2. The Code Administrators Association of Kentucky; or

3. A provider that is approved pursuant to paragraph (d) of this subsection.

(b) The board may fund a continuing education program through the Building Inspectors' Financial Incentive Training Program Fund.

(c) A candidate seeking certification shall:

1. Provide verification on either:

a. Form OHBC BC/CE-1; or

b. A certificate of completion provided by a pre-approved training provider; and

2. Complete a minimum of twelve (12) hours of training annually.

(d)1. A provider shall submit a request for approval of the educational program to the department no later than thirty (30) days prior to the date the educational program will be offered.

2. The program shall be recognized as approved training for the Kentucky Certified Building Inspector Program if the program:

a. Appropriately relates to the general business skills or the technical skills required of a certified inspector;

b. Contains sufficient educational content to improve the quality of a certified inspector's performance;

c. Is taught by qualified instructors; and

d. Includes a course evaluation.

3.[The office shall establish continuing education programs, or the office will utilize the Code Administrators Association of Kentucky, or may approve other programs offering Continuing education and such educational programs may be funded in whole or in part. As determined by the board, through the "Building Inspectors' Financial Incentive Training Program Fund".

(b) A candidate seeking certification shall provide verification on form OHBC BC/CE-1, certificate of completion from the pre-approved training source(s) or other form of verification as pre-approved by the office, constituting a minimum of twelve (12) hours of training annually.

(c) Educational programs, for programs other than those established by the office, shall submit a request for approval of the educational program to the office no later than thirty (30) days from the date of the educational program is to be offered and receive written approval from the office to be recognized as approved training for the Kentucky Certified Building Inspector Program.] The written request shall include the following:

a.[1.] The total number of continuing education hours;

b.[2.] Course syllabus;

c.[3.] A detailed outline of the contents of the course;

d.[4.] Name and address of vendor;

e.[5.] Name, address, and qualifications of instructor;

f.[6.] Program agenda with written description of class material which clearly identifies that the educational content relates to the general business skills or the technical skills required of a certified inspector which would improve the quality of the certified inspector's performance; and

g.[7.] Location and keeper of class attendance verification list, which shall be[available for at least twelve (12)]period of time to be not less than twelve (12)] months after completion of the educational program[)]. [constituting of a minimum of twelve (12) hours of training annually.

(b) Participation in these programs shall be mandatory for all

inspectors and trainees in order to maintain certification or continue as a trainee.

(c) An inspector shall provide the office with verification of the required continuing education on form OHBC-BC/CE-1, Continuing Education Verification Form.]

(3) The ~~commissioner~~[executive director], in his discretion, may waive the time requirements in this administrative regulation for hardships shown or if circumstances warrant a waiver due to changes in testing procedures, standards or dates or other reasons which would render strict application unfair.

Section 4. Application for Training and Certification. (1) To become a trainee or a candidate for certification, a person shall submit:

(a) A completed form OHBC BC/CP-1, Initial Application Form[for Kentucky Building Code Inspectors Certification Program];

(b) A fifty (50) dollar application fee; and

(c) Written proof that the applicant has met the requirements established in subsection (2) of this section.

(2) An applicant shall have:

(a)1. Graduated from high school or earned a general education diploma; and

2.a. Three (3) years experience in a responsible, directly-related construction position, such as a foreman, which required the ability to effectively read and interpret building plans and specifications; or

b. Three (3) years experience in an architect's or engineer's office performing building design or drafting duties;

(b) Graduated from a college or university with an associate degree in a design, building technology or construction-related subject; or

(c) Graduated from a college or university with a ~~bachelor's~~[bachelor] degree in architecture, engineering, fire science, or building technology.

(3) A certified inspector or trainee, including an inspector holding a limited certificate, shall~~be required each year~~ to pay an annual renewal fee of fifty (50) dollars not later than the last day of the certified inspector or trainee's birth month in order to maintain certification and to continue to be registered. If a certified inspector or trainee fails to renew ninety (90) days after the last day of their birth month, an additional fifty (50) dollar fee shall be accrued.

(4) A person shall not engage in any inspection activities for the enforcement of the Kentucky Building Code, or the One- and Two-Family Dwelling Code as adopted within the Kentucky Building Code for application to one (1) and two (2) family dwellings and townhouses, unless that person is currently enrolled with the department and has otherwise complied with the requirements of this administrative regulation.

Section 5. Certification Requirements, Responsibilities and Jurisdiction for Inspectors. (1) One (1) and two (2) family dwelling inspector.

(a) A person shall be classified as a one (1) and two (2) family dwelling inspector if the person has:

1. Been tested for competency under the One- and Two-Family Dwelling Code~~for the Kentucky Building Code~~, by passing the following NCPCCI test modules:

a. Test 1A Building One- and Two-Family Dwelling; and

b. Test 4A Mechanical One- and Two-Family Dwelling;

2. Completed the orientation training required by Section 3(1) of this administrative regulation; and

3. Complied with the requirements of this administrative regulation.

(b) A one (1) and two (2) family dwelling inspector shall be qualified to perform all functions related to the enforcement of the One- and Two-Family Dwelling Code, including issuing permits, reviewing and approving construction documents, conducting on-site inspections, and issuing compliance letters and certificates of occupancy for the construction of one (1) and two (2) family dwellings and townhouses.

(2) Building inspector, level I.

(a) A person shall be classified as a building inspector, level I, if the person has:

1. Been tested for competency under the One- and Two-Family Dwelling Code and the Kentucky Building Code, by passing the following NCPCCI test modules:

a. Test 1A Building One- and Two-Family Dwelling;

b. Test 4A Mechanical One- and Two-Family Dwelling;

c. Test 1B Building General; and

d. Test 3B Fire Protection General;

2. Completed the orientation training required by Section 3(1) of this administrative regulation; and

3. Complied with the requirements of this administrative regulation.

(b) A building inspector, level I<sub>1</sub> shall be qualified to perform all functions related to the enforcement of the Kentucky Building Code, including issuing permits, reviewing and approving construction documents, ~~conducting~~[making] on-site inspections, and issuing compliance letters and ~~certificates of occupancy~~[occupancy certificates] for all buildings of the occupancy type and size assigned to local governments by KRS 198B.060(2).

(3) Building inspector, level II.

(a) A person shall be classified as a building inspector, level II, if the person has:

1. Been tested for competency under the One- and Two-Family Dwelling Code and the Kentucky Building Code, by passing the following NCPCCI test modules:

a. Test 1A Building One- and Two-Family Dwelling;

b. Test 4A Mechanical One- and Two-Family Dwelling;

c. Test 1B Building General;

d. Test 3B Fire Protection General; and

e. Test 4B Mechanical General;

2. Completed the orientation training required by Section 3(1) of this administrative regulation; and

3. Complied with the requirements of this administrative regulation.

(b) A~~certified~~ building inspector, level II<sub>1</sub> shall be qualified to perform functions related to the enforcement of the Kentucky Building Code for all buildings of the occupancy type and size assigned to local government under KRS 198B.060(2) including issuing permits, reviewing and approving construction documents, ~~conducting~~[making] on-site inspections, and issuing compliance letters and certificates of occupancy.

(c) A building inspector, level II<sub>1</sub> shall be qualified to ~~conduct~~[make] on-site inspections of all buildings which were assigned to the department pursuant to KRS 198B.060(4).

(4) Building inspector, level III.

(a) A person shall be classified as a building inspector, level III, if the person has:

1. Been tested for competency under the One- and Two-Family Dwelling Code, Mechanical Code and the Kentucky Building Code, by passing the following NCPCCI test modules:

a. Test 1A Building One- and Two-Family Dwelling;

b. Test 4A Mechanical One- and Two-Family Dwelling;

c. Test 1B Building General;

d. Test 3B Fire Protection General;

e. Test 4B Mechanical General;

f. Test 1C Building Plan Review;

g. Test 3C Fire Protection Plan Review; and

h. Test 4C Mechanical Plan Review;

2. Completed the orientation training required by Section 3(1) of this administrative regulation; and

3. Complied with the requirements of this administrative regulation.

(b) A building inspector, level III<sub>1</sub> shall be qualified to perform all functions relating to the enforcement of the Kentucky Building Code, including issuing permits, reviewing and approving construction documents ~~conducting~~[making] on-site inspections and issuing compliance letters and certificates of occupancy for all buildings, regardless of size or occupancy type. A local inspector shall not be authorized to perform these functions on buildings assigned to the department by KRS 198B.060(4), except by petition to and approval of more inspection responsibility by the department pursuant to 815 KAR 7:110.

(5) Mechanical inspector, one (1) and two (2) family dwellings.

(a) A person shall be classified as a mechanical inspector of one (1) and two (2) family dwellings if the person has:

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1. Been tested for competency under the One- and Two-Family Dwelling Code by passing the NCPCCI test module, Test 4A Mechanical One- and Two-Family Dwelling;

2. Completed the orientation training required by Section 3(1) of this administrative regulation; and

3. Complied with the requirements of this administrative regulation.

(b) A mechanical inspector of one (1) and two (2) family dwellings shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the One- and Two-Family Dwelling Code including conducting inspections of one (1) and two (2) family dwelling mechanical installations for compliance.

(6) Mechanical inspector general (other than one (1) and two (2) family dwellings).

(a) A person shall be classified as a mechanical inspector general if the person has:

1. Been tested for competency under the Mechanical Code, by passing the NCPCCI test module, Test 4B Mechanical General;

2. Completed the orientation training required by Section 3(1) of this administrative regulation; and

3. Complied with the requirements of this administrative regulation.

(b) A mechanical inspector general shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the Mechanical Code including management of mechanical code enforcement activity, supervision of mechanical inspectors or plans examination, performing plans examination for compliance and conducting inspections of structures for compliance.

(7) Mechanical inspector and plan reviewer.

(a) A person shall be classified as a mechanical inspector and plan reviewer if the person has:

1. Been tested for competency under the One- and Two-Family Dwelling Code and the Mechanical Code, by passing the following NCPCCI test modules:

a. Test 4A Mechanical One- and Two-Family Dwelling;

b. Test 4B Mechanical General; and

c. Test 4C Mechanical Plan Review;

2. Completed the orientation training required by Section 3(1) of this administrative regulation; and

3. Complied with the requirements of this administrative regulation.

(b) A mechanical inspector and plan reviewer shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the ~~One- and Two-Family Dwelling Code~~ and the Mechanical Code including management of mechanical code enforcement activity, supervision of mechanical inspectors or plans examination, performing plans examination for compliance and conducting inspections of structures for compliance.

(8) Trainees and limited certificates.

(a) A person making inspections pursuant to a limited certificate shall be supervised by a Kentucky certified building inspector, with a level I certification or higher.

(b) A person making inspections as a trainee without a certificate shall be supervised by a person with a level of certification equal to or higher than that which the trainee is pursuing.

(c)

~~[A person making inspections pursuant to a limited certificate or as a trainee without a certificate shall be supervised by a Kentucky certified building inspector.~~

(b) A trainee or a person with a limited certificate shall not issue permits, construction document approval letters, compliance letters or certificates of occupancy, or make any official or final determinations relating to the Kentucky Building Code.

(9) A person making inspections as authorized by this administrative regulation shall not overrule, supplant or order any corrections or alterations which conflict with the approved construction documents. If an inspector believes that the construction documents are wrong or that the construction is in violation of the code, the inspector shall immediately refer the matter to the certified building inspector responsible for approval of the construction documents for resolution.

(10) Upon application by a testing agency, a national code

group, or by an applicant for certification, the department~~[office]~~ may recognize other examinations as equivalent to the listed NCPCCI examinations. The person or group submitting the examination shall demonstrate that the examinations cover the same codes and require the same level of knowledge as the NCPCCI examinations.

Section 6. Suspension and Revocation of Certification. (1) Formal written complaints concerning an inspector shall be submitted to the Department~~[Office]~~ of Housing, Buildings, and Construction for review and appropriate action.

(2) Action shall not be taken against a building inspector governed under this administrative regulation until a hearing has been held in accordance with KRS Chapter 13B and the commissioner determines that the inspector is not enforcing the Kentucky Building Code, improperly enforcing the code or violating his responsibilities as an inspector, as required by law.

Section 7. Grandfather Clause. (1) A person who was certified as a building inspector, level I, II or III, or who held a limited certificate on December 15, 1997 shall:

(a) Not be required to take additional test modules to renew the certification, if the person has maintained continuous certification since December 15, 1997; and

(b) Complete the continuing education requirements as established in Section 3 of this administrative regulation prior to renewal of the certificate.

(2) A person who was certified on March 22, 2001, but who seeks to achieve a higher level of certification, shall comply with the testing modules required by this administrative regulation.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form OHBC -BC/CE 1, Continuing Education Verification Form, March 2005; and

(b) Form OHBC -BC/CP 1, Initial Application Form ~~[for Kentucky Building Code Inspectors Certification Program]~~, March 2005.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department~~[Office]~~ of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD MOLONEY, Executive Director

LARRY R. BOND, Commissioner

HANK LIST, Deputy Secretary

For ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 12, 2008

FILED WITH LRC: June 13, 2008 at 9 a.m.

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**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**

**Department of Public Protection**

**Office of Housing, Buildings, and Construction**

**Division of Building Code Enforcement**

**(As Amended at ARRS, August 12, 2008)**

**815 KAR 7:120. Kentucky Building Code.**

RELATES TO: KRS 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 198B.990

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050, **EO 2008-507**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) requires the Kentucky Board of Housing, Buildings and Construction to adopt and promulgate a mandatory uniform state~~[statewide]~~ building code, based on a model code, which establishes standards for construction of buildings in the state. **EO 2008-507, effective June 16, 2008, reorganized the Office of**

**Housing, Buildings and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department.** This administrative regulation establishes the Kentucky Building Code's general provisions.

Section 1. Definitions. (1) "Board of Housing" or "board" means the Kentucky Board of Housing, Buildings and Construction.

(2) "Building" is defined by KRS 198B.010(4).

(3) **"Commissioner" means the commissioner of the Department of Housing, Buildings, and Construction.**

**(4) "Department" means the Department of Housing, Buildings, and Construction.** ~~["Executive director" is defined by KRS 198B.010(9).]~~

**(5) "Farm" means property having a bona fide agricultural or horticultural use as defined by KRS 132.010(9) and (10), which is qualified by and registered with the property valuation administrator in the county in which the property is located.**

~~(6) [(4)] "Farm" means property:~~

~~(a) Located outside the corporate limits of a municipality on at least ten (10) acres;~~

~~(b) Used for purposes set forth in the definitions of "agricultural land" and "horticultural land", established in KRS 132.010(9) and (10), respectively; and~~

~~(c) Qualified by and registered with the property valuation administrator in that county.~~

~~(5) [(4)] "Fire Code Official" means the State Fire Marshal, fire chief, or other enforcement officer designated by the appointing authority of the jurisdiction for the enforcement of the provisions of KRS 227.300 and the Kentucky Standards of Safety as established in 815 KAR 10:060.~~

~~(7) [(6)] "Industrialized building system" or "building system" is defined in KRS 198B.010(16).~~

~~(8) [(7)] "KBC" means the Kentucky Building Code as established in this administrative regulation.~~

~~(9) [(8)] "Kentucky Residential Code" means the **Kentucky Residential Code as established in 815 KAR 7:125.** [International Residential Code, 2006, as amended for application in Kentucky by 815 KAR 7:125.]~~

~~(10) [(9)] "Kentucky Standards of Safety" means the requirements established in 815 KAR 10:060, which serve as the fire prevention code for existing buildings as well as a supplement to this code.~~

~~(11) [(10)] "Manufactured home" is defined by KRS 198B.010(23) and 227.550(7).~~

~~(12) [(11)] "Modular home" means an industrialized building system, which is designed to be used as a residence and which is not a manufactured or mobile home.~~

~~[(12)] "Office" is defined by KRS 198B.010(11).]~~

~~(13) "Ordinary repair" is defined by KRS 198B.010(19).~~

~~(14) "Single-family dwelling" or "**one-family**" ~~one (1) family~~ dwelling" means a single unit providing complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation, and which shall not be connected to any other unit or building.~~

~~(15) ["Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.~~

~~(16) "**Two-family**" ~~Two (2) family~~ dwelling" means a building containing not more than two (2) dwelling units which are connected.~~

Section 2. Administration and Enforcement of the Building Code. (1) Notwithstanding the requirements of the International Building Code 2006, the Kentucky changes established in the 2007 **edition of the** Kentucky Building Code shall be mandatory and shall supersede any conflicting provision of the international code.

(2)(a) Except as provided in paragraph (b) of this subsection and as superseded by the provisions of this administrative regulation and the 2007 **edition of the** Kentucky Building Code, the International Building Code 2006[,] shall be **Kentucky's** ~~the~~ mandatory state building code ~~for Kentucky~~ for all buildings.

(b) **One - and - two** ~~One (1) and two (2)~~ family dwellings and

townhouses shall be governed by 815 KAR 7:125.

Section 3. State Plan Review and Inspection Fees. The fees required by this section shall apply for plan review and inspection by the ~~department~~ **office**.

(1) Fast track elective.

(a) A request for expedited site and foundation approval of one (1) week or less, prior to full review of the complete set of construction documents, shall be accompanied by the fee required by Table 121.3.1 **of the 2007 edition of the Kentucky Building Code** ~~in subsection (3) of this section~~, plus an additional fifty (50) percent of the basic plan review or inspection fee.

(b) The additional fifty (50) percent fee shall not be less than \$400 and not more than \$3,000.

(c) The entire fee shall be paid with the initial plan submission.

(2) New buildings.

(a) The ~~department's~~ **office's** inspection fees shall be calculated by:

1. Multiplying the total building area under construction by the cost per square foot of each occupancy type **established in the 2007 edition of the Kentucky Building Code** ~~as listed in subsection (3) of this section~~; and

2. Computing the square footage by the outside dimensions of the building.

(b) The fee for buildings with multiple or mixed occupancies **shall** ~~may~~ be calculated using the cost per square foot multiplier of the predominant use.

(3) Table 121.3.1, Basic **Department** ~~Office~~ Fee Schedule. The basic plan review or inspection fee shall be ~~as set forth in Section 121, Table 121.3.1 of the 2007 edition of the Kentucky Building Code~~ **[which is incorporated by reference:]**

~~[(a) Assembly occupancies, eight and one-half (8.5) cents;~~

~~(b) Business occupancies, seven and one-half (7.5) cents;~~

~~(c) Day care centers, seven and one-half (7.5) cents;~~

~~(d) Educational occupancies, seven and one-half (7.5) cents;~~

~~(e) Frozen food plants, six and one-half (6.5) cents;~~

~~(f) High hazard occupancies, seven and one-half (7.5) cents;~~

~~(g) Industrial factories, six and one-quarter (6.25) cents;~~

~~(h) Institutional occupancies, eight and one-half (8.5) cents;~~

~~(i) Mercantile occupancies, seven and one-half (7.5) cents;~~

~~(j) Residential occupancies, seven and one-half (7.5) cents;~~

~~(k) Warehouses, five and one-half (5.5) cents; or~~

~~(l) All other nonresidential, six and one-half (6.5) cents.]~~

~~(4) Additions to existing buildings.~~

(a) Plan review fees for additions to existing buildings, which shall not require the entire building to conform to the Kentucky Building Code, shall be calculated in accordance with the schedule **established** ~~listed~~ in subsection (3) of this section by the measurement of the square footage of the addition, as determined by the outside dimensions of the addition.

(b) The minimum fee for review of plans under this subsection shall be \$200.

(5) Change in use.

(a) Plan review fees for existing buildings in which the use group or occupancy type is changed shall be calculated in accordance with the schedule **established** ~~listed~~ in subsection (3) of this section by using the total square footage of the entire building or structure under the new occupancy type as determined by the outside dimensions.

(b) The minimum fee for review of plans under this subsection shall be \$200.

(6) Alterations and repairs.

(a) Plan review fees for alterations and repairs not otherwise covered by this fee schedule shall be calculated by using the lower result of:

1. Multiplying the cost for the alterations or repairs by 0.0025; or

2. Multiplying the total area being altered or repaired by the cost per square foot of each occupancy type listed in the schedule **established** in subsection (3) of this section.

(b) The total square footage shall be determined by the outside dimensions of the area being altered or repaired.

(c) The minimum fee for review of plans under this subsection shall be \$200.

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(7) Specialized fees. In addition to the fees listed in subsections (1) through (6) of this section, **the fees established in this section shall be applied for specialized plan reviews.** [the following fees shall be applied for the specialized plan reviews listed in this subsection:]

(a) Automatic Sprinkler Review Fee Schedule shall be as set forth in Section 121, Table 121.3.9 of the 2007 **edition of the Kentucky Building Code** [which is incorporated by reference].

(b) Fire detection system review fee shall be as set forth in Section 121.3.10 of the 2007 **edition of the Kentucky Building Code** [which is incorporated by reference].

(c) The standpipe plan review fee shall be as set forth in Section 121.3.11 of the 2007 **edition of the Kentucky Building Code** [which is incorporated by reference].

(d) Carbon dioxide suppression system review fee shall be as set forth in Section 121.3.12 of the 2007 **edition of the Kentucky Building Code** [which is incorporated by reference].

(e) Clean agent suppression system review fee shall be as set forth in Section 121.3.13 of the 2007 **edition of the Kentucky Building Code** [which is incorporated by reference].

(f) Foam suppression system review fee shall be as set forth in Section 121.3.14 of the 2007 **edition of the Kentucky Building Code** [which is incorporated by reference].

(g) The commercial range hood review fee shall be as set forth in Section 121.3.15 of the 2007 **edition of the Kentucky Building Code** [which is incorporated by reference].

(h) Dry chemical systems review fee (except range hoods) shall be as set forth in Section 121.3.16 of the 2007 **edition of the Kentucky Building Code** [which is incorporated by reference].

(i) 121.3.17 Spectator seating system review fee shall be as set forth in Section 121.3.17 of the 2007 **edition of the Kentucky Building Code** [which is incorporated by reference].

(j) [Table 121.3.9, Automatic Sprinkler Review Fee Schedule

1. An inspection of four (4) through 200 sprinklers shall be a fee of \$150;

2. An inspection of 201 through 300 sprinklers shall be a fee of \$175;

3. An inspection of 301 through 400 sprinklers shall be a fee of \$240;

4. An inspection of 401 through 750 sprinklers shall be a fee of \$250; and

5. An inspection of over 750 sprinklers shall be a fee of \$250 plus twenty (20) cents per sprinkler over 750.

(b) Fire detection system review fee:

1. Zero to 20,000 square feet shall be \$150; and

2. Over 20,000 square feet shall be \$150 plus twenty (20) dollars for each additional 10,000 square feet in excess of 20,000 square feet.

(c) The standpipe plan review fee shall be \$150. The combination stand pipe and riser plans shall be reviewed under the automatic sprinkler review fee schedule.

(d) Carbon dioxide suppression system review fee:

1. One (1) through 200 pounds of agent shall be \$150; and

2. Over 200 pounds of agent shall be \$150 plus two (2) cents per pound in excess of 200 pounds.

(e) Clean agent suppression system review fee:

1. a. Up to thirty-five (35) pounds of agent shall be \$150; and

b. Over thirty-five (35) pounds shall be \$150 plus six (6) cents per pound in excess of thirty-five (35) pounds.

2. The fee for gaseous systems shall be five (5) cents per cubic foot and not less than \$150.

(f) Foam suppression system review fee.

1. The fee for review of a foam suppression system shall be fifty (50) cents per gallon of foam concentrate if the system is not part of an automatic sprinkler system.

2. Foam suppression system plans that are submitted as part of an automatic sprinkler system shall be reviewed under the automatic sprinkler review fee schedule.

3. The fee for review of plans under subparagraph 1 of this paragraph shall not be less than \$150 or more than \$1,500.

(g) The commercial range hood review fee shall be \$150 per hood.

(h) Dry chemical systems review fee (except range hoods). The fee for review of:

1. One (1) through thirty (30) pounds of agent shall be \$150; and

2. Over thirty (30) pounds of agent shall be \$150 plus twenty-five (25) cents per pound in excess of thirty (30) pounds.

(i) The flammable, combustible liquids or gases, and hazardous materials plan review fee shall be \$100 for the first tank, plus fifty (50) dollars for each additional tank and \$100 per piping system including valves, fill pipes, vents, leak detection, spill and overfill detection, cathodic protection or associated components.

(k) [(i)] Boiler and unfired pressure vessel fees. Plan review fees of boiler and unfired pressure vessel installations shall be in accordance with 815 KAR 15:027.

Section 4. General. All plans shall be designed and submitted to conform to this administrative regulation.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "International Building Code, 2006", First Edition, International Code Council, Inc.; and

(b) **The "[2007] Kentucky Building Code", Ninth Edition, 2007, revised August [May], 2008.**

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the **Department** [Kentucky Office] of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD MOLONEY, Commissioner

LARRY BOND, Deputy Secretary

LARRY BOND, Deputy Secretary

For ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 14, 2008

FILED WITH LRC: July 15, 2008 at 10 a.m.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 Ext. 144, fax (502) 573-1057.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Department Of Public Protection

Office of Housing, Buildings, And Construction

Division of Building Code Enforcement

(As Amended at ARRS, August 12, 2008)

815 KAR 7:125. Kentucky Residential Code.

RELATES TO: KRS 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 198B.990

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050, **EO 2008-507**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) requires the Kentucky Board of Housing, Buildings and Construction to adopt and promulgate a mandatory uniform **state** [statewide] building code, based on a model code, which establishes standards for construction of buildings in the state. **EO 2008-507, effective June 16, 2008, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department.** This administrative regulation establishes the basic mandatory uniform statewide code provisions relating to construction of one- and two-family dwellings and townhouses.

Section 1. Definitions. (1) "Board of Housing" or "Board" means the Kentucky Board of Housing, Buildings and Construction.

(2) "Building" is defined by KRS 198B.010(4).

(3) **"Commissioner" means the commissioner of the Department of Housing, Buildings, and Construction.**

(4) **"Department" means the Department of Housing, Building, and Construction.** ["Executive director" is defined by KRS 198B.010(9).]

~~(5)~~~~(4)~~ "Farm" means property having a bona fide agricultural or horticultural use as defined by KRS 132.010(9) and (10) which is qualified by and registered with the property valuation administrator in the county in which the property is located.

~~(6)~~~~(5)~~ "KBC" means the Kentucky Building Code as established in 815 KAR 7:120.

~~(7)~~~~(6)~~ "Manufactured home" is defined by KRS 198B.010(23) and 227.550(7).

~~(8)~~~~(7)~~ "Modular home" means an industrialized building system, which is designed to be used as a residence and which is not a manufactured or mobile home.

~~[(8) "Office" is defined by KRS 198B.010(11).]~~

(9) "Ordinary repair" is defined by KRS 198B.010(19).

(10) "Single-family dwelling" or "one-family dwelling" means a single unit providing complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation, and which shall not be~~is not~~ connected to any other unit or building.

~~(11) ["Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.~~

~~(12)~~ "Two-family dwelling" means a building containing not more than two (2)~~two-family~~ dwelling units which are connected.

Section 2. Mandatory Building Code Requirements for Dwellings. (1) Except as provided in subsection (2) of this section, a single-family dwelling, two-family dwelling, or townhouse shall not be constructed unless it is in compliance with the International Residential Code, 2006 for One- and Two-Family Dwellings, as amended by this administrative regulation and the 2007 Kentucky Residential Code.

(2) Exceptions.

(a) Permits, inspections, and certificates of occupancy shall not be required for a single-family dwelling unless required by a local ordinance.

(b) All residential occupancies which are not single-family, two-family or townhouses shall comply with the [2006] International Building Code for One- and Two-Family Dwellings, 2006, and the 2007 Kentucky Building Code [Residential Code as amended by this administrative regulation and the 2007 Kentucky Residential Code] [Kentucky Building Code, 2006] [as established in 815 KAR 7:120].

(3) The International Residential Code for One- and Two-Family Dwellings, 2006, shall be amended as established in the 2007 Kentucky Residential Code.

(4) Plans for single-family or one-family dwellings, two-family dwellings, and townhouses shall be designed and submitted to conform to this administrative regulation.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "International Residential Code for One- and Two-Family Dwellings, 2006", International Code Council, Inc., February 2006; and

(b) "2007 Kentucky Residential Code", August~~May 14~~, 2008~~May 15, 2007~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department~~Kentucky Office~~ of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD MOLONEY, Commissioner

LARRY BOND, Deputy Secretary

LARRY BOND, Deputy Secretary

For ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 14, 2008

FILED WITH LRC: July 15, 2008 at 10 a.m.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 Ext. 144, fax (502) 573-1057.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET  
Department of Public Protection  
Office of Housing, Buildings, and Construction  
(As Amended at ARRS, August 12, 2008)

**815 KAR 35:060. Licensing of electrical contractors, electricians, and master electricians pursuant to KRS 227A.060.**

RELATES TO: KRS 227A.010, 227A.060, 227A.100  
STATUTORY AUTHORITY: KRS 227A.040(1), (8), 227A.060, 227A.100(9), EO 2008-507

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227A.040 and 227A.060 authorize the Office of Housing, Buildings and Construction to promulgate administrative regulations to establish a process for the licensing of electrical contractors, electricians, and master electricians EO 2008-507, effective June 16, 2008, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, electricians, and master electricians.

Section 1. Application Procedure. An applicant for licensure pursuant to KRS 227A.060 shall:

(1) Complete an application as required by Section 2 of this administrative regulation;

(2) Pay the application fee required by Section 3 of this administrative regulation;

(3) Provide verifiable evidence of experience and training as specified in Section 4 of this administrative regulation; and

(4) Provide evidence of passage of the examination required by Section 5 of this administrative regulation.

Section 2. Application Requirements. (1) The applicant shall complete an application form, either Form SFM-EC-2 or Form SFM-EC-3, which shall include the following information:

(a) Applicant's name;

(b) Applicant's home address;

(c) Applicant's business address;

(d) Applicant's home and business telephone numbers;

(e) Applicant's date of birth;

(f) Applicant's Social Security number or employer identification number;

(g) Applicant's email address;

(h) Licenses applied for;

(i) For master electrician or electrician, a listing of the applicant's experience in the electrical industry, including business name and address, job title, and supervisor's name;

(j) For master electrician or electrician, a listing of all approved training or apprenticeship programs the applicant has completed;

(k) A statement confirming that the applicant is not in default on any educational loan guaranteed by the Kentucky Higher Education Assistance Authority in accordance with KRS 164.772(3);

~~(l) [For master electrician, electrician, and electrical contractor,] A passport-sized color photograph of the applicant;~~

(m) For electrical contractor licenses, the name and license number of the master electrician who will be affiliated with the applicant; and

(n) For electrical contractor licenses, the name of the insurer providing the applicant's liability and workers' compensation coverage and the policy number of each coverage.

(2) An applicant for reciprocity shall:

(a) Comply with the requirements set forth in the reciprocity agreement between Kentucky and the state in which the applicant is licensed; and

(b) Submit a completed Form SFM-EC-4, which shall include:

1. A statement confirming that the applicant is not in default on any educational loan guaranteed by the Kentucky Higher Education Assistance Authority in accordance with KRS 164.772(3);

2. A passport-sized color photograph of the applicant;

3. For electrical contractor licenses, proof of compliance with the insurance and workers' compensation requirements estab-

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lished in Section 7 of this administrative regulation; and  
4. A copy of the applicant's license from the participating state.

Section 3. Application, Renewal, Reinstatement, and Late Fees. (1) The application and renewal fees shall be:

- (a) \$200 for an electrical contractor's license;
- (b) \$100 for a master electrician's license; or
- (c) Fifty (50) dollars for an electrician's license.

(2) Application, renewal, reinstatement, and late fees shall not be refundable.

(3) The reinstatement fee for any lapsed license pursuant to KRS 227A.100(4) shall be equal to the license renewal fee and shall be paid in addition to the license renewal fee.

(4) The late renewal fee shall be fifty (50) dollars. If all documents required to be submitted for renewal are postmarked on or before the last day of the renewal month, the filing shall be considered timely and no late fee shall be assessed.

(5) Renewal fees for inactive licenses shall be one-half (1/2) the fee for an active license.

(6) The fee to return a license to an active status from an inactive status shall be the remaining one-half (1/2) renewal fee for that year.

Section 4. Verification of Experience. (1) An applicant shall submit verification of experience for licensure as a master electrician or electrician.

(2) Verification shall be submitted in the form of:

(a) Tax returns or other official tax documents which indicate the applicant's occupation or the nature of the applicant's business activities, including Federal Schedule C, Form W-2, Form 1099, or local occupational tax returns;

(b) Copies of business licenses issued by a county or municipal government which did not issue electrical contractor's, master electrician's, or electrician's licenses prior to June 24, 2003, if the business license indicates the applicant operated as an electrical contractor or worker;

(c) A sworn affidavit, on the affiant's letterhead, certifying that the affiant has personal knowledge that the applicant has worked as a master electrician or an electrician from at least one (1) of the following:

- 1. An electrical workers union;
- 2. A certified electrical inspector; or

3. An employer that employed the applicant as an electrician or a master electrician; or

(d) Records of a branch of the United States Armed Forces which indicate the applicant performed a function which primarily involved electrical work. Experience gained while in the military shall be deemed to have been earned in Kentucky.

Section 5. Examinations. (1) Applicants for an electrical contractor's license, master electrician's license, or electrician's license shall pass an examination administered by an approved examination provider. Passing scores shall be valid for a period of three (3) years.

(2) For electrical contractor's licenses, applicants that are business entities shall designate a person to take the examination on behalf of the applicant. The designee shall be:

- (a) An owner of the applicant;
- (b) An officer of the applicant;
- (c) A director of the applicant; or
- (d) A full-time employee of the applicant.

(3)(a) If a person designated by an entity as provided in subsection (2) of this section leaves the employment or no longer maintains an interest in that entity, the entity shall designate another person who either:

- 1. Has passed the examination; or
- 2. Successfully passes the examination within thirty (30) days.

(b) Failure to have a designee that has passed the examination shall render the licensee no longer qualified to be licensed.

(4) Upon application by a testing agency, a national code group or by an applicant for certification, the department[office] may recognize another examination as equivalent to an examination administered by an approved examination provider. The person or group submitting the examination shall demonstrate that the

examination covers the same material and requires the same level of knowledge as the approved examinations.

Section 6. Appeal Procedure. (1) Applicants denied a license may appeal the decision to the Commissioner of the Department[Executive Director of the Office] of Housing, Buildings, and Construction. The applicant shall submit written notice of the appeal to the Department[Office] of Housing, Buildings, and Construction within ten (10) days of receiving notice that the license application has been denied.

(2) The appeal shall be conducted pursuant to KRS Chapter 13B by a hearing officer appointed by the Commissioner of the Department[Executive Director of the Office] of Housing, Buildings, and Construction.

Section 7. Proof of Insurance. (1) Applicants for an electrical contractor's license shall provide proof of compliance with liability insurance requirements by providing an insurance certificate showing general liability insurance coverage of at least \$500,000 issued by an insurer authorized to do business in Kentucky and naming the Department[Office] of Housing, Buildings, and Construction, Electrical Licensing, as the certificate holder.

(2) The applicant shall provide proof of workers' compensation insurance by providing:

(a) An insurance certificate from an authorized Kentucky insurer or other workers' compensation coverage provider; or

(b) A notarized statement that the applicant is not required to obtain workers' compensation coverage and the reason why the[such] coverage is not required.

(3) Electrical contractors shall require their liability and workers' compensation insurers to provide notice to the Department[Office] of Housing, Buildings, and Construction if:

- (a) A policy is cancelled, terminated, or not renewed; or
- (b) The policy limits are lowered.

(4) Electrical contractors shall advise the Department[Office] of Housing, Buildings, and Construction of any:

- (a) Change in their insurance coverage, including cancellation or termination of any policy;
- (b) Change in the insurer providing the coverage; or
- (c) Changed circumstances which require the contractor to obtain coverage.

Section 8. Renewal Requirements. (1) Licenses shall be valid for one (1) year and shall be renewed on or before the last day of the licensee's birth month. For electrical contractor licenses issued to corporations, partnerships, or business entities without a birth month, the renewal month shall be the month the license was issued.

(2) The Department[Office] of Housing, Buildings, and Construction may issue an initial license to an applicant for a period of up to twenty-three (23) months and may charge a pro rata initial license fee to reflect the actual term of the initial license.

(3) A licensee shall apply for license renewal[~~of their license(s)~~] on Form SFM-EC-5.

Section 9. Inactive License Status. (1) A licensee may request a license be placed in inactive status. A licensee shall not perform any electrical work requiring a license if the license is inactive.

(2) An electrical contractor licensee in inactive status shall not be required to maintain liability insurance or provide proof to the Department[Office] of Housing, Buildings, and Construction of compliance with workers' compensation laws.

(3) Certified electrical inspectors may be licensed as an electrical contractor, master electrician, or electrician, but shall maintain that license as inactive while having an active electrical inspector certification.

(4) Performing electrical work which requires a license while holding an inactive license shall be grounds for revocation or suspension of all electrical licenses and certifications held by the licensee.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Form SFM-EC-2, "Electrical Contractor's License Applica-

tion", [(March, 2007 edition)];

(b) Form SFM-EC-3, "~~Electrical~~[Master Electrician's and Electrician's] License Application", [(March, 2007 edition)];

(c) Form SFM-EC-4, "Reciprocity Electrical License Application", [(March, 2007 edition)]; and

(d) Form SFM-EC-5, "Electrical License Renewal Application," [(June, 2008 edition)] [(March, 2007 edition)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department[Office] of Housing, Buildings, and Construction, Electrical Licensing, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD MOLONEY, Executive Director

LARRY R. BOND, Commissioner

HANK LIST, Deputy Secretary

For ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 12, 2008

FILED WITH LRC: June 13, 2008 at 9 a.m.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 Ext. 144, fax (502) 573-1057.

# ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

## Department of Public Protection

### Office of Housing, Buildings and Construction

#### Division of Fire Prevention

(As Amended at ARRS, August 12, 2008)

## 815 KAR 35:100. Electrical continuing education procedure.

RELATES TO: KRS 227A.040(8) and [KRS] 227A.100(7)

STATUTORY AUTHORITY: KRS 227A.040(8), 227A.100(7),

### EO 2008-507

NECESSITY, FUNCTION AND CONFORMITY: KRS 227A.040(8) authorizes[requires] the Office of Housing, Buildings and Construction to promulgate administrative regulations to establish procedures for the governing of electrical licenses. KRS 227A.100(7) requires the office to promulgate an administrative regulation to establish requirements relating to continuing education, including requirements for providers. EO 2008-507, effective June 16, 2008, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes the continuing education procedures for master electricians, electricians, and electrical contractors.

Section 1. Proof of Continuing Education Requirements. Prior to license renewal, each licensee shall present proof of completion of at least six (6) hours of continuing education for each license held during the immediately-preceding twelve (12) months. ~~and~~

(2) The proof shall be signed by the licensee and certified by the provider of the continuing education course on Form SFM-ECEC-1 [SFM-ECEC-4], Electrical License Renewal Proof of Continuing Education, or its electronic equivalent.

Section 2. Continuing Education Course Requirements. (1) Continuing education for master electrician and electrician licensees shall relate to the National Electric Code (NFPA 70) or other electrical codes incorporated into the Kentucky Building Code or the Kentucky Residential Code or to safety practices and procedures. Only two (2) of the six (6) hours of continuing education required for electricians, master electricians and contractors may be safety practices and procedures.

(2) Continuing education for electrical contractors shall relate to business and employment law, business practices, and safety practices and procedures.

(3) Only two (2) of the six (6) hours of continuing education required for electricians, master electricians, and contrac-

## tors shall be safety practices and procedures.

Section 3. Continuing Education Providers. (1) Continuing education shall be provided by one (1) of the organizations listed in KRS 227A.100(7) or by an individual or organization recommended by the Electrical Advisory Committee and approved by the Department[Office] of Housing, Buildings, and Construction.

(2) An applicant for certification as a continuing education provider shall submit the following information to the Department[Office] of Housing, Buildings, and Construction:

- (a) Syllabus[Types] of courses to be offered;
- (b) Times and dates that courses will be offered;
- (c) Location where courses will be offered;
- (d) Availability of courses to the general public;
- (e) Fees to be charged for the courses;
- (f) Identity and qualifications of teachers; and
- (g) Attendance verification procedures.

(3) The Department[Office] of Housing, Buildings, and Construction shall certify the applicant if it determines that:

- (a) The applicant can reliably provide continuing education;
- (b) The applicant will provide an accurate certification of attendance at all courses offered; and
- (c) ~~That~~ All courses will be taught by persons with sufficient technical knowledge of the subject matter.

(4) Certification shall[may] be denied, suspended, or revoked if the Department[Office] of Housing, Buildings, and Construction determines, after an opportunity to be heard pursuant [a hearing pursuant] to KRS Chapter 13B, that the individual or organization no longer meets the requirements of subsection (3) of this section.

(5) All continuing education providers shall notify the Department[Office] of Housing, Buildings, and Construction of all courses to be offered at least thirty (30) days prior to the courses. The notice shall include the date, time, location and topic of the course and the fee to be charged, if any. The Department[Office] of Housing, Buildings, and Construction shall maintain a list of all courses to be offered and make the list available to the public.

(6) For classes open to the public, continuing education providers shall not establish a minimum number of attendees required to hold a class.

(7)(a) Except as provided in paragraph (b) of this subsection, a provider[All providers] shall notify the Office of Housing, Buildings and Construction, as well as those who have registered to attend, a minimum of one (1) week prior to the cancellation of any class.

(b) A class may be cancelled within one (1) week of the scheduled class date if necessary due to a natural disaster or inclement weather. Reasonable steps shall be taken to inform the registered attendees and the department of the cancellation and reason for the cancellation.[Minimum notification requirement will only be waived in cases where acts of God, including natural disasters or inclement weather preclude classes as scheduled.]

(8) On written request by a licensee, the Department[Office] of Housing, Buildings, and Construction may recognize for continuing education credit courses attended in another state if the material covered complies with Section 2 of this administrative regulation.

Section 4. Certified Electrical Inspectors. A certified electrical inspector holding an inactive master electrician or electrician license may apply six (6) hours of the continuing education required by 815 KAR 35:015, Section 8(1), to the required six (6) hours for a master electrician or electrician's license if the hours are not used to satisfy the continuing education requirement for electrical contractors.

Section 5. Inactive License. Prior to activating an inactive license, the license holder shall provide proof that the license holder has completed six (6) hours of continuing education for each year the license has been inactive. At least six (6) hours of the continuing education shall have been completed in the twelve (12) months prior to activating the license.

Section 6. Incorporation by Reference. (1) Form SFM-ECEC-1, Electrical License Renewal Proof of Continuing Education, March



2005, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, at the **Department[Office]** of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5404, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD MOLONEY, Executive Director

LARRY R. BOND, Commissioner

HANK LIST, Deputy Secretary

For ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 12, 2008

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**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Hospitals and Provider Operations**  
**(As Amended at ARRS, August 12, 2008)**

**907 KAR 1:479. Durable medical equipment covered benefits and reimbursement.**

RELATES TO: KRS 205.520, 42 C.F.R. 424.57, 440.230, 441 Subpart B, 45 C.F.R. 162.1002, 42 U.S.C. 1396d(r)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396a, b, d

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

Section 1. Definitions. (1) "Certificate of Medical Necessity" or "CMN" means a form required by the department to document medical necessity for durable medical equipment, medical supplies, prosthetics, or orthotics.

(2) "CMS" means the Centers for Medicare and Medicaid Services.

(3) "Covered benefit" or "covered service" means an item of durable medical equipment, a prosthetic, an orthotic, or a medical supply for which coverage is provided by the department.

(4) "Customized" means that an item has been constructed, fitted, or altered to meet the unique medical needs of an individual Medicaid recipient and does not include the assemblage of modular components or the addition of various accessories that do not require unique construction, fitting, or alteration to individual specifications.

(5) "Date of service" means:

(a) The date the durable medical equipment, prosthetic, orthotic, or supply (DMEPOS) is provided to the recipient;

(b) For mail order DMEPOS, the later of the shipping date or the date the recipient was discharged home from an inpatient hospital stay or nursing facility;

(c) For DMEPOS delivered to a recipient's home immediately subsequent to a hospital inpatient stay, the date of final discharge; or

(d) Up to two (2) days prior to discharge from a hospital or nursing facility if:

1. The item was provided for purposes of fitting or training of the patient;

2. The item is ready for use in the recipient's home; and

3. No billing is done prior to the date of the recipient's discharge from the facility.

(6) "Department" means the Department for Medicaid Services or its designee.

(7) "DMEPOS" means durable medical equipment, prosthetics, orthotics, and supplies.

(8) "Durable medical equipment" or "DME" means medical equipment which:

(a) Withstands repeated use;

(b) Is primarily and customarily used to serve a medical purpose;

(c) Is generally not useful to a person in the absence of an illness or injury; and

(d) Is appropriate for use in the home.

(9) "Family choices" means a benefit plan for an individual who:

(a) Is covered pursuant to:

1. 42 U.S.C. 1396a(a)(10)(A)(i)(I) and 1396u-1;

2. 42 U.S.C. 1396a(a)(52) and 1396r-6 (excluding children eligible under Part A or E of title IV, codified as 42 U.S.C. 601 to 619 and 670 to 679b);

3. 42 U.S.C. 1396a(a)(10)(A)(i)(IV) as described in 42 U.S.C. 1396a(l)(1)(B);

4. 42 U.S.C. 1396a(a)(10)(A)(i)(VI) as described in 42 U.S.C. 1396a(l)(1)(C);

5. 42 U.S.C. 1396a(a)(10)(A)(i)(VII) as described in 42 U.S.C. 1396a(l)(1)(D); or

6. 42 C.F.R. 457.310; and

(b) Has a designated package code of 2, 3, 4, or 5.

(10) "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services that represent procedures.

(11) "Home" means a place where the recipient resides excluding:

(a) A nursing facility;

(b) A hospital;

(c) An intermediate care facility for individuals with mental retardation or a developmental disability; or

(d) An institution for individuals with a mental disease as defined in 42 U.S.C. 1396d(i).

(12) "Incidental" means that a medical procedure or service:

(a) Is performed at the same time as a more complex primary procedure or service; and

(b) 1. Requires little additional resources; or

2. Is clinically integral to the performance of the primary procedure or service.

(13) "Invoice price" means an itemized account of a manufacturer's actual charges that are billed to a supplier for goods or services provided by the manufacturer or distributor.

(14) "Medicaid DME Program Fee Schedule" means a list, located at <http://chfs.ky.gov/dms>, containing the current Medicaid maximum allowable amount established by the department for a covered item of durable medical equipment, a prosthetic, an orthotic, or a medical supply.

(15) "Medical supply" means an item that is:

(a) Consumable;

(b) Nonreusable;

(c) Disposable; and

(d) Primarily and customarily used to serve a medical purpose.

(16) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130[Medical necessity and clinically appropriate determination basis].

(17) "Mutually exclusive" means that two (2) DMEPOS items:

(a) Are not reasonably provided in conjunction with one another during the same patient encounter on the same date of service;

(b) Represent duplicate or very similar items; or

(c) Represent medically inappropriate use of HCPCS codes.

(18) "Nutritional supplement" means a liquid or powder administered enterally or orally that is specially formulated to supply complete diagnosis-appropriate nutrition, including kilocalories, protein, vitamins, and minerals.

(19) "Orthotic" means a mechanical device or brace that is designed to support or correct a defect or deformity or to improve the function of a movable part of the body.

(20) "Prescriber" means a physician, podiatrist, optometrist, dentist, advanced registered nurse practitioner or physician's as-

sistant who:

(a) Is acting within the legal scope of clinical practice under the licensing laws of the state in which the health care provider's medical practice is located;

(b) If an enrolled Kentucky Medicaid provider, is in compliance with all requirements of:

1. 907 KAR 1:671[~~Conditions of Medicaid provider participation; withholding overpayments, administrative appeal process, and sanctions~~]; and

2. 907 KAR 1:672[~~Provider enrollment, disclosure, and documentation for Medicaid participation~~];

(c) Is in good standing with the appropriate licensure board and CMS; and

(d) Has the legal authority to write an order for a medically-necessary item of durable medical equipment, a medical supply, a prosthetic, or an orthotic for a recipient.

(21) "Prior authorization" means approval which a supplier shall obtain from the department before being reimbursed.

(22) "Prosthetic" means an item that replaces all or part of the function of a body part or organ.

(23) "Reasonableness" means:

(a) The expense of the item does not exceed the therapeutic benefits which could ordinarily be derived from use of the item;

(b) The item is not substantially more costly than a medically-appropriate alternative; and

(c) The item does not serve the same purpose as an item already available to the recipient.

(24) "Supplier" means a Medicare-certified provider of durable medical equipment, medical supplies, prosthetics, or orthotics who is enrolled in the Kentucky Medicaid Program.

(25) "Usual and customary charge" means the uniform amount that a supplier bills to the general public for a specific covered benefit.

Section 2. General Coverage. (1)(a) Except as provided in subsection (2)(b) of this section, coverage for an item of durable medical equipment, a medical supply, a prosthetic, or an orthotic shall:

1. Be based on medical necessity and reasonableness;

2. Be clinically appropriate pursuant to the criteria established in 907 KAR 3:130[~~Medical necessity and clinically appropriate determination basis~~];

3. Require prior authorization in accordance with Section 7 of this administrative regulation;

4. Be provided in compliance with 42 C.F.R. 440.230(c); and

5. Be restricted to an item used primarily in the home.

(b) Coverage of prosthetic devices shall not exceed \$1,500 per twelve (12) month period per member of the family choices benefit plan.

(2) Unless otherwise established in this administrative regulation;

(a) Except as provided in paragraph (b) of this subsection, the criteria referenced in subsection (1)(a) of this section that was in effect on the date the durable medical equipment, prosthetic, orthotic, or medical supply is provided shall be used as the basis for the determination of coverage, subject to medical necessity override by the department to ensure compliance with 42 C.F.R. 440.230(c).

(b) If criteria referenced in subsection (1)(a) of this section does not exist or is unavailable for a given item or service, the Medicare criteria in effect on the date the durable medical equipment, prosthetic, orthotic, or medical supply is provided shall be used as the basis for the determination of coverage, subject to medical necessity override by the department to ensure compliance with 42 C.F.R. 440.230(c).

(3) Unless specifically exempted by the department, a DME item, medical supply, prosthetic, or orthotic shall require a CMN that shall be kept on file by the supplier for the period of time mandated by 45 C.F.R. 164.316 [a period of five (5) years].

(4) An item for which a CMN is not required shall require a prescriber's written order.

(5) If Medicare is the primary payor for a recipient who is dually eligible for both Medicare and Medicaid, the supplier shall comply with Medicare's CMN requirement and a separate Medicaid CMN

shall not be required.

(6) A required CMN shall be:

(a) The appropriate Medicare CMN in use at the time the item or service is prescribed;

(b) A MAP-1000, Certificate of Medical Necessity; or

(c) A MAP-1000B, Certificate of Medical Necessity, Metabolic Formulas and ~~Foods~~[Food].

(7) A CMN shall contain:

(a) The recipient's name and address;

(b) A complete description of the item or service ordered;

(c) The recipient's diagnosis;

(d) The expected start date of the order;

(e) The length of the recipient's need for the item;

(f) The medical necessity for the item;

(g) The prescriber's name, address, telephone number and Unique Provider Identification Number (UPIN), if applicable; and

(h) The prescriber's signature and date of signature.

(8) Except as specified in subsections (9) and (10) of this section, a prescriber shall examine a recipient within sixty (60) days prior to the initial order of a DME item, medical supply, prosthetic, or orthotic.

(9) Except as specified in subsection (11) of this section, a prescriber shall not be required to examine a recipient prior to subsequent orders for the same DME item, medical supply, prosthetic, or orthotic unless there is a change in the order.

(10) A prescriber shall not be required to examine a recipient prior to the repair of a DME item, prosthetic, or orthotic.

(11) A change in supplier shall require a new CMN signed and dated by a prescriber who shall have seen the recipient within sixty (60) days prior to the order.

(12) A CMN shall be updated with each request for prior authorization.

(13) The department shall only purchase a new DME item.

(14) A new DME item that is placed with a recipient initially as a rental item shall be considered a new item by the department at the time of purchase.

(15) A used DME item that is placed with a recipient initially as a rental item shall be replaced by the supplier with a new item prior to purchase by the department.

(16) A supplier shall not bill Medicaid for a DME item, medical supply, prosthetic, or orthotic before the item is provided to the recipient.

Section 3. Purchase or Rental of Durable Medical Equipment.

(1) The following items shall be covered for purchase only:

(a) A cane;

(b) Crutches;

(c) A standard walker;

(d) A prone or supine stander;

(e) [A vest airway clearance system, excluding the generator;

(f)] A noninvasive electric osteogenesis stimulator; or

(f)(g)] Other items designated as purchase only in the Medicaid DME Program Fee Schedule.

(2) The following items shall be covered for rental only:

(a) An apnea monitor;

(b) A respiratory assist device having bivalve pressure capability with backup rate feature;

(c) [A generator for use with a vest airway clearance system;

(d)] A ventilator;

(d)(e)] A negative pressure wound therapy electric pump;

(e)(f)] An electric breast pump;

(f)(g)] The following oxygen systems:

1. Oxygen concentrator;

2. Stationary compressed gas oxygen;

3. Portable gaseous oxygen;

4. Portable liquid oxygen; or

5. Stationary liquid oxygen; or

(g)(h)] Other items designated as rental only in the Medicaid DME Program Fee Schedule.

(3) With the exception of items specified in subsections (1) or (2) of this section, durable medical equipment shall be covered through purchase or rental based upon anticipated duration of medical necessity.

(4)(a) A MAP-1001 form shall be completed if a recipient re-

quests an item or service not covered by the department.

(b) A recipient shall be financially responsible for an item or service requested by the recipient via a MAP 1001 that is not covered by the department.

(c) A MAP 1001 shall be completed as follows:

1. The DME supplier shall ensure that the recipient or authorized representative reads and understands the MAP 1001;

2. The recipient or authorized representative shall indicate on the MAP 1001 if the recipient chooses to receive a noncovered service;

3. The DME supplier shall complete the supplier information on the MAP 1001;

4. The DME supplier shall provide a copy of the completed MAP 1001 to the recipient; and

5. The DME supplier shall maintain the completed MAP 1001 on file for at least the period of time mandated by 45 C.F.R. 164.316 [five (5) years].

(d) If an item or service was denied due to the supplier not meeting the timeframes to obtain a prior authorization or the item or service does not meet medical necessity for a prior authorization, the MAP 1001 shall not be used to obligate the recipient for payment.

Section 4. Special Coverage. (1) An augmentative communication device or other electronic speech aid shall be covered for a recipient who is permanently unable to communicate through oral speech if:

(a) Medical necessity is established based on a review by the department of an evaluation and recommendation submitted by a speech-language pathologist; and

(b) The item is prior authorized by the department.

(2) A customized DME item shall be covered only if a noncustomized medically appropriate equivalent is not commercially available.

(3) A physical therapy or occupational therapy evaluation shall be required for:

(a) A power wheelchair; or

(b) A wheelchair for a recipient who, due to a ~~size of~~ medical condition, is unable to be reasonably accommodated by a standard wheelchair.

(4) Orthopedic shoes and attachments shall be covered if medically necessary for:

(a) A congenital defect or deformity;

(b) A deformity due to injury; or

(c) Use as a brace attachment.

(5) A therapeutic shoe or boot shall be covered if medically necessary to treat a nonhealing wound, ulcer, or lesion of the foot.

(6) An enteral or oral nutritional supplement shall be covered if:

(a) The item is prescribed by a licensed prescriber;

(b) Except for an amino acid modified preparation or a low-protein modified food product specified in subsection (7) of this section, it is the total source of a recipient's daily intake of nutrients;

(c) The item is prior authorized; and

(d) Nutritional intake is documented on the CMN.

(7) An amino acid modified preparation or a low-protein modified food product shall be covered:

(a) If prescribed by a physician for the treatment of an inherited metabolic condition specified in KRS 205.560;

(b) If not covered through the Medicaid outpatient pharmacy program;

(c) Regardless of whether it is the sole source of nutrition; and

(d) If the item is prior authorized.

(8) A DME item intended to be used for postdischarge rehabilitation in the home may be delivered to a hospitalized recipient within two (2) days prior to discharge home for the purpose of rehabilitative training.

(9) An electric breast pump shall be covered for the following:

(a) Medical separation of mother and infant;

(b) Inability of an infant to nurse normally due to a significant feeding problem; or

(c) An illness or injury that interferes with effective breast feeding.

(10) Rental of an airway clearance vest system for a three (3)

month trial period shall be required before purchase of the equipment.

Section 5. Coverage of Repairs and Replacement of Equipment. (1) The department shall not be responsible for repair or replacement of a DME item, prosthetic, or orthotic if the repair or replacement is covered by a warranty.

(2) Reasonable repair to a purchased DME item, prosthetic, or orthotic shall be covered as follows:

(a) During a period of medical need;

(b) If necessary to make the item serviceable;

(c) If no warranty is in effect on the requested repair; and

(d) In accordance with Section 6(2) of this administrative regulation.

(3) Extensive maintenance to purchased equipment, as recommended by the manufacturer and performed by authorized technicians, shall be considered to be a repair.

(4) The replacement of a medically necessary DME item, medical supply, prosthetic, or orthotic shall be covered for the following:

(a) Loss of the item;

(b) Irreparable damage or wear; or

(c) A change in a recipient's condition that requires a change in equipment.

(5) Suspected malicious damage, culpable neglect, or wrongful disposition of a DME item, medical supply, prosthetic, or orthotic shall be reported by the supplier to the department if the supplier is requesting prior authorization for replacement of the item.

Section 6. Limitations on Coverage. (1) The following items shall be excluded from Medicaid coverage through the DME Program:

(a) An item covered for Medicaid payment through another Medicaid program;

(b) Equipment that is not primarily and customarily used for a medical purpose;

(c) Physical fitness equipment;

(d) Equipment used primarily for the convenience of the recipient or caregiver;

(e) A home modification;

(f) Routine maintenance of DME that includes:

1. Testing;

2. Cleaning;

3. Regulating; and

4. Assessing the recipient's equipment;

(g) Except as specified in Section 7(1)(k) of this administrative regulation, backup equipment; or

(h) An item determined not medically necessary, clinically appropriate or reasonable by the department.

(2) An estimated repair shall not be covered if the repair cost equals or exceeds:

(a) The purchase price of a replacement item; or

(b) The total reimbursement amount for renting a replacement item of equipment for the estimated remaining period of medical need.

(3) Durable medical equipment, prosthetics, orthotics and medical supplies shall be included in the facility reimbursement for a recipient residing in a hospital, nursing facility, intermediate care facility for individuals with mental retardation or a developmental disability, or an institution for individuals with a mental disease and shall not be covered through the durable medical equipment program.

Section 7. Prior Authorization Requirements and Process. (1) Prior authorization shall be required for the following:

(a) An item or repair billed to the department at \$300 or more;

(b) Rental of equipment excluding oxygen services after twelve (12) continuous months of service;

(c) A therapeutic shoe or boot;

(d) Orthopedic shoes;

(e) An adjustment to a prosthetic or orthotic;

(f) An augmentative communication device;

(g) A customized DME item;

(h) A replacement DME item, prosthetic, or orthotic;

(i) A nutritional supplement;

(j) An amino acid modified preparation or a low-protein modified food product;

(k) A loaner item for a member-owned piece of equipment that is being repaired;

(l) A DMEPOS item denoted by a general or nonspecific HCPCS code;

(m) An item designated on the Medicaid DME Program Fee Schedule as requiring prior authorization;

(n) An item which exceeds the quantity limitation set in the Medicaid DME Program Fee Schedule; or

(o) An item designated by a HCPCS code not indicated on the Medicaid DME Program Fee Schedule that is determined by the department to be a covered benefit.

(2) If an item requires prior authorization, a supplier shall comply with the following:

(a) Submit all required documentation prior to or within one (1) year from the date of service; ~~and~~ ~~or~~

(b) ~~1-~~ Submit a written request ~~within seven (7) business days~~ to the department for prior authorization which shall include the prescriber's order; and

~~(c) 2-~~ Submit a completed CMN to the department within ninety (90) business days of the date of the request for prior authorization ~~After receiving acknowledgement from the department that the prior authorization request is being processed, submit to the department a completed CMN and prior authorization form within thirty (30) business days.~~

(3) If an item requires an evaluation or recommendation by a specialist, the evaluation or recommendation shall be in writing and submitted with the CMN.

(4) The supplier shall not bill a recipient for a DME item, medical supply, prosthetic, or orthotic if the supplier has not completed the prior authorization process within the timeframe specified in subsection (2) of this section.

(5) If a supplier provides an item that requires prior authorization before the prior authorization is received, the supplier shall assume the financial risk that the prior authorization may not be subsequently approved.

(6) A supplier may initially obtain a faxed CMN from a prescriber to expedite the prior authorization process, but a signed, original CMN subsequently shall be required.

(7) A supplier shall request prior authorization by mailing or faxing the following information to the department:

(a) A completed prior authorization form MAP-9;

(b) A completed CMN; and

(c) If requested by the department, additional information required to establish medical necessity, clinical appropriateness, or reasonableness.

(8) The following additional information shall be required for prior authorization of a customized item:

(a) An estimate of the fitting time;

(b) An estimate of the fabrication time;

(c) A description of the materials used in customizing the item; and

(d) An itemized estimate of the cost of the item, including the cost of labor.

(9) The following additional information shall be required for prior authorization of a repair to purchased equipment:

(a) A description of the nature of the repair;

(b) An itemization of the parts required for the repair;

(c) An itemization of the labor time involved in the repair; and

(d) A copy of the manufacturer's warranty indicating the purchase date or a written notice from the DME supplier stating that the requested repair is not covered by the warranty.

(10) An item shall be prior authorized based on:

(a) Medical necessity and the corresponding prior-authorized period of medical necessity; and

(b) 1. Clinical appropriateness pursuant to the criteria established in 907 KAR 3:130 ~~Medical necessity and clinically appropriate determination basis~~; or

2. Medicare criteria if the criteria referenced in subparagraph 1. of this paragraph ~~paragraph (b) 1. of this subsection~~ does not exist or is unavailable.

(11) A prior authorization period may be extended upon the provision of a new CMN indicating current medical necessity and:

(a) Clinical appropriateness pursuant to the criteria established in 907 KAR 3:130 ~~Medical necessity and clinically appropriate determination basis~~; or

(b) Medicare criteria if the criteria referenced in paragraph (a) of this subsection does not exist or is unavailable.

(12)(a) Prior authorization by the department shall not be a guarantee of recipient eligibility.

(b) Eligibility verification shall be the responsibility of the supplier.

(13) Upon review and determination by the department that removing prior authorization shall be in the best interest of Medicaid recipients, the prior authorization requirement for a specific covered benefit shall be discontinued, at which time the covered benefit shall be available to all recipients without prior authorization.

(14) If it is determined by the department to be in the best interest of Medicaid recipients, the department shall have the authority to designate that an item of durable medical equipment suitable for use in the home may be provided, if prior authorized, to a recipient temporarily residing in a hospital that does not bill patients, Medicaid, or other third-party payers for any health care services.

(15)(a) For purposes of obtaining prior authorization, a signed invoice price quote from the manufacturer shall be acceptable documentation.

(b) If the invoice price differs from the manufacturer's invoice price quote, the supplier shall amend the prior authorization and shall maintain documentation of the quote and the invoice.

Section 8. Reimbursement for Covered Services. (1) Except for an item specified in subsections (2) and (5) of this section, a new item that is purchased shall be reimbursed at the lesser of:

(a) The supplier's usual and customary charge for the item;

(b) The purchase price specified in the Medicaid DME Program Fee Schedule; or

(c) If indicated in the Medicaid DME Program Fee Schedule as manually priced:

1. Invoice price plus twenty (20) percent for an item not utilizing a billing code specified in subparagraph 2 or 3 of this paragraph;

2. The manufacturer's suggested retail price minus fifteen (15) percent for HCPCS codes E1037 through E1039, E1161, E1220, E1229, E1231 through E1238, ~~or~~ K0009 ~~or~~ K0044; or

3. The manufacturer's suggested retail price minus twenty-two (22) percent for a customized component billed using HCPCS codes E0955 through E0957, E0960, E1002 through E1010, E1015, E1028 through E1030, E2201 through E2204, E2300, E2301, E2310, E2311, E2321 ~~E2320~~ through E2330, E2340 through E2343, E2373 through E2376, E2381 through E2396, E2399, E2601 through E2621, K0108, ~~K0560 through~~ K0669, K0734 through K0737, or L8499.

(2) Pursuant to 45 C.F.R. 162.1002, the department shall recognize U.S. Department for Health and Human Services quarterly HCPCS code updates.

(a) An item denoted by a HCPCS code not currently on the Medicaid DME Program Fee Schedule that has been determined by the department to be a covered service shall be manually priced using the actual invoice price plus twenty (20) percent.

(b) The department shall post HCPCS code change information on its web site accessible at <http://chfs.ky.gov/dms>. The information may also be obtained by writing the Department for Medicaid Services at 275 East Main Street, Frankfort, Kentucky 40621.

(3) If a copayment is required, copayment provisions, including any provider deduction, shall be as established in 907 KAR 1:604 ~~Recipient cost-sharing~~.

(4) For a service covered under Medicare Part B, reimbursement shall be in accordance with 907 KAR 1:006 ~~Coverage of and payment for services for persons eligible for benefits under both Title XIX and Title XVIII~~.

(5) Reimbursement for the purchase of an item that is currently being rented shall be:

(a) For an item that has been rented for less than three (3) months, the purchase price specified in subsection (1) of this section minus the cumulative rental payment made to the supplier; or

(b) For an item that has been rented for three (3) months or

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more, 120 percent of the purchase price specified in subsection (1) of this section minus the cumulative rental payment made to the supplier.

(6) A rental item shall be reimbursed as follows, but reimbursement shall not exceed the supplier's usual and customary charge for the item:

(a) The rental price specified in the Medicaid DME Program Fee Schedule; or

(b) If indicated in the Medicaid DME Program Fee Schedule as manually priced:

1. Ten (10) percent of the purchase price per month for the monthly rental of an item; or

2. Two and one-half (2.5) percent of the purchase price per week for the weekly rental of an item that is needed for less than one (1) month.

(7) Except for an item specified in Section 3(2) of this administrative regulation, if reimbursement for a rental item has been made for a period of twelve (12) consecutive months, the item shall be considered to be purchased and shall become the property of the recipient.

(8) Labor costs for a repair shall be billed in quarter hour increments using the HCPCS codes for labor specified in the Medicaid DME Program Fee Schedule and shall be reimbursed the lessor of:

(a) The supplier's usual and customary charge; or

(b) The reimbursement rate specified in the Medicaid DME Program Fee Schedule.

(9) Reimbursement shall include instruction and training provided to the recipient by the supplier.

(10) The rental price of an item shall include rental of the item and the cost of:

(a) Shipping and handling;

(b) Delivery and pickup;

(c) Setup;

(d) Routine maintenance; and

(e) Essential medical supplies required for proper use of the equipment.

(11) The purchase price of a prosthetic or orthotic shall include:

(a) Acquisition cost and applicable design and construction;

(b) Required visits with a prosthetist or orthotist prior to receipt of the item;

(c) Proper fitting and adjustment of the item for a period of one (1) year;

(d) Required modification, if not a result of physical growth or excessive change in stump size, for a period of one (1) year; and

(e) A warranty covering defects in material and workmanship.

Section 9. Conditions for Provider Participation. A participating DME provider shall:

(1) Have an active Medicare DME provider number and adhere to all CMS supplier standards in accordance with 42 C.F.R. 424.57;

(2) Be enrolled in the Kentucky Medicaid Program in accordance with:

(a) 907 KAR 1:671[~~Conditions of Medicaid provider participation: withholding over payments, administrative appeal process, and sanctions~~]; and

(b) 907 KAR 1:672[~~Provider enrollment, disclosure, and documentation for Medicaid participation~~];

(3) Comply with the requirements regarding the confidentiality of personal medical records pursuant to 42 U.S.C. 1320d and 45 C.F.R. Parts 160 and 164; and

(4) Comply with the following:

(a) A supplier shall bill Medicaid rather than a recipient for a covered service;

(b) A supplier shall not bill a recipient for a service that is denied by the department on the basis that the service is incidental to, or mutually exclusive with, a covered service; and

(c) A supplier may bill a recipient for a service not covered by Medicaid if the provider so informed the recipient of noncoverage prior to providing the service.

Section 10. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid recipient based upon an application of

this administrative regulation shall be in accordance with 907 KAR 1:563[~~Medicaid covered services hearings and appeals~~].

(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560[~~Medicaid hearings and appeals regarding eligibility~~].

(3) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671[~~Conditions of Medicaid provider participation: withholding overpayments, administrative appeal process, and sanctions~~].

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form MAP-9, Prior Authorization Form", February 2005 edition, Department for Medicaid Services;

(b) "Form MAP-1000, Certificate of Medical Necessity", February 2005 edition, Department for Medicaid Services;

(c) "Form MAP-1000B, Certificate of Medical Necessity, Metabolic Formulas and ~~Foods~~[Feed]", February 2005 edition, Department for Medicaid Services;

(d) "Medicaid DME Program Fee Schedule", January 2008[~~October 2006~~] edition; and

(e) "Form MAP 1001, Advance Member Notice", September 2006 edition.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. through 4:30 p.m.

ELIZABETH A. JOHNSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: July 12, 2008

FILED WITH LRC: July 14, 2008 at 9 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

FINANCE AND ADMINISTRATIVE CABINET  
Department of Revenue  
(Amended After Comments)

103 KAR 3:020. Sales and Telecommunications Forms manual.

RELATES TO: KRS 61.870-61.884, 131.020, 131.030, 131.041-131.081, 131.081, 131.110, 131.130, 131.130, 131.155, 131.170, 131.181, 131.183, 131.190, 131.190(1), 134.580, 136.600-136.660, 139.070, 139.095, 139.170, 139.185, 139.210, 139.230, 139.240, 139.250, 139.260, 139.270, 139.470, 139.480, 139.483, 139.495, 139.497, 139.515, 139.517, 139.5382, 139.550, 139.570, 139.590, 139.620(1), 139.770(2), 139.778, 144.132, 154.20-206, 154.45-090, 154.45-110, 160.613-160.617, 224.01-310, 247.920

STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the administration of Sales and Use Taxes and Telecommunications Excise and Gross Revenues Tax by the Department of Revenue.

Section 1. Sales and Use Tax - Required Forms. (1) Revenue Form 51A101(a), "Sales and Use Tax Permit", shall be conspicuously displayed by the sales and use tax permit holder at the location for which the permit was issued.

(2) Revenue Form 51A101(b), "Sales and Use Tax Permit Update", shall be issued by the Department of Revenue to update the Sales and Use Tax Permit with business name and address change information.

(3) Revenue Form 51A101(c), "Kentucky Streamlined Sales and Use Tax (SST) Filing Information Permit", shall be issued to Model 4 Streamlined Sales and Use Tax filers registered in Kentucky and shall be conspicuously displayed by the (SST) permit holder at the location for which the permit was issued.

(4) Revenue Form 51A101(d), "Sales and Use Tax Permit Update (SST)", shall be issued by the Department of Revenue to update the Kentucky Streamlined Sales and Use Tax (SST) Filing Information Permit with business name and address change information.

(5)(2) Revenue Form 51A102, "Kentucky Sales and Use Tax Worksheet", shall be submitted to the Department of Revenue by a Kentucky sales and use tax permit holder to report total receipts, itemized deductions, amount subject to Kentucky use tax and total amount of Kentucky sales and use tax due for a particular reporting period.

(6)(3) Revenue Form 51A102E, "Kentucky Sales and Use Tax Worksheet - Electronic Funds Transfer", shall be submitted to the Department of Revenue by a Kentucky sales and use tax permit holder who remits payment via electronic funds transfer to report total receipts, itemized deductions, amount subject to Kentucky use tax and total amount of Kentucky sales and use tax due for particular reporting period.

(7)(4) Revenue Form 51A103, "Kentucky Accelerated Sales and Use Tax Worksheet", shall be completed by a Kentucky sales and use tax permit holder who has been designated as an accelerated filer to report total receipts, itemized deductions, amount subject to use tax, and total amount of sales and use tax due.

(8)(5) Revenue Form 51A103E, "Kentucky Accelerated Sales and Use Tax Worksheet - Electronic Funds Transfer", shall be submitted on a monthly basis by a Kentucky sales and use tax permit holder to report total receipts, itemized deductions, amount subject to use tax, and total amount of sales and use tax due on an accelerated basis and remitted via electronic funds transfer.

(9)(6) Revenue Form 51A105, "Resale Certificate", shall be presented to a seller by a Kentucky sales and use tax permit holder

to claim that the tangible personal property purchased from the seller will be:

- (a) Resold in the regular course of business;
- (b) Leased or rented; or
- (c) Used as raw material, industrial supply or industrial tool.

(10)(7) Revenue Form 51A109, "Application for Energy Direct Pay Authorization (Sales and Use Tax and Utility Gross Receipts License Tax)", shall be filed with the Department of Revenue by a manufacturer, processor, miner or refiner to apply for an energy direct pay authorization.

(11)(8) Revenue Form 51A110, "Direct Pay Authorization", shall be presented to a Kentucky sales and use tax permit holder by a company authorized to report and pay directly to the Department of Revenue the sales or use tax on all purchases of tangible personal property, excluding energy and energy-producing fuels.

(12)(9) Revenue Form 51A111, "Certificate of Exemption Machinery for New and Expanded Industry", shall be presented to a Kentucky sales and use tax permit holder by a manufacturer or production processor to claim exemption from sales and use tax.

(13)(40) Revenue Form 51A112, "Application for Direct Pay Authorization", shall be submitted by a registered sales and use tax permit holder wishing to obtain a direct pay authorization.

(14)(44) Revenue Form 51A113, "Kentucky Consumer's Use Tax Worksheet", shall be completed by a registered consumer's use tax permit holder and submitted to the Department of Revenue on a regular basis to report the amount of purchases subject to Kentucky use tax.

(15)(42) Revenue Form 51A113 (O)(9) Consumer's Use Tax Return", shall be completed by a person storing, using, or otherwise consuming tangible personal property in Kentucky who is not registered for a consumer's use tax permit number.

(16)(43) Revenue Form 51A115, "Order for Selected Sales and Use Tax Publications", shall be presented to the Department of Revenue by anyone who wishes to order selected sales and use tax forms and regulations.

(17) Revenue Form 51A116, "Use Tax Compliance Inquiry Worksheet", shall be completed by a purchaser of Watercraft, Aircraft, or other tangible property to document if the purchase of the property is subject to the Kentucky Use Tax.

(18)(44) Revenue Form 51A125, "Application for Purchase Exemption Sales and Use Tax", shall be presented to the Department of Revenue by a resident 501C(3) charitable, educational, or religious institution; historical sites; and units of federal, state or local governments to apply for a sales and use tax exemption on purchases of tangible personal property and certain services to be utilized in the exempt entity's function.

(19)(45) Revenue Form 51A126, "Purchase Exemption Certificate", shall be presented to a retailer by a resident charitable, educational or religious institution or Kentucky historical site to claim exemption from sales and use tax on purchases of tangible personal property or services.

(20)(46) Revenue Form 51A127, "Out-of-State Purchase Exemption Certificate", shall be presented to a retailer by an out-of-state agency or institution that is qualified for exemption in their state of residence.

(21)(47) Revenue Form 51A128, "Solid Waste Recycling Machinery Exemption Certificate", shall be presented to a retailer by a business or organization that claims exemption from sales and use tax on the purchase, lease or rental of machinery or equipment to be primarily used for recycling purposes to collect, source separate, compress, bale, shred or otherwise handle waste material.

(22)(48) Revenue Form 51A129, "Kentucky Sales and Use Tax Energy Exemption Annual Return", shall be submitted to the Department of Revenue by an energy direct pay holder to reconcile the actual amount of sales and use tax due on purchases of energy and energy-producing fuels to the total amount of sales and use tax paid based upon previous estimates of tax due.

(23)(49) Revenue Form 51A130, "Kentucky Sales and Use Tax Monthly Aviation Fuel Tax Credit Schedule of Qualified Certifi-

cated Air Carriers", shall be completed by a qualified certificated air carrier on a monthly basis to claim an aviation fuel tax credit against the company's sales and use tax liability for the month.

~~(24) [(20)]~~ Revenue Form 51A131, "Kentucky Sales and Use Tax Monthly Aviation Fuel Dealer Supplementary Schedule", shall be completed by aviation fuel dealers selling aviation fuel in order to determine the sales and use tax collected and remitted on the sale of aviation fuel, including jet fuel.

~~(25) [(24)]~~ Revenue Form 51A132, "Kentucky Sales and Use Tax Equine Breeders Supplementary Schedule", shall be completed by an equine breeder to report taxable receipts from equine breeding fees.

~~(26) [(22)]~~ Revenue Form 51A135, "Kentucky Sales Tax Motor Vehicle Sales Supplementary Schedule", shall be completed by motor vehicle dealers who collect Kentucky sales tax on the sale of motor vehicles to residents of states who subject Kentucky residents to sales upon the purchase of motor vehicles in their states.

~~(27) [(23)]~~ Revenue Form 51A143, "Purchase Exemption Certificate - Watercraft Industry", shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of tangible personal property that will be used for the direct operation of watercraft in the activity of transporting property or in conveying persons for hire.

~~(28) [(24)]~~ Revenue Form 51A149, "Certificate of Exemption for Pollution Control Facilities", shall be presented to a retailer by a holder of a pollution control tax exemption certificate or jointly by a contractor and the holder of a pollution control tax exemption certificate to claim exemption from sales and use tax on the purchase of materials and equipment that will become part of a certified pollution control facility.

~~(29) [(25)]~~ Revenue Form 51A150, "Aircraft Exemption Certificate", shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of aircraft, repair and replacement parts for the aircraft, and supplies that will be used for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire. ~~[(26) Revenue Form 51A151, "Enterprise Zone Sales and Use Tax Exemption Certificate for Qualified Businesses Machinery and Equipment", shall be presented in duplicate to a retailer by an enterprise zone qualified business to claim exemption from sales and use tax on the purchase of machinery and equipment to be used in a designated enterprise zone.~~

~~(27) Revenue Form 51A152, "Enterprise Zone Sales and Use Tax Exemption Certificate for Building Materials", shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of building materials to be used in remodeling, rehabilitation, or new construction in an enterprise zone.]~~

~~(30) [(28)]~~ Revenue Form 51A154, "Certificate of Exemption Out-of-State Delivery for Aircraft, All Terrain Vehicle (ATV), Mobile/Manufactured Homes, Campers, Boats, Motors or Trailers", shall be completed in triplicate by the seller and buyer when the sale of the tangible personal property occurs and the seller makes delivery of the tangible personal property out of state, and also completes the affidavit portion of the form within two (2) days of the time of delivery to claim that the property was purchased exempt from sales tax and delivered immediately out of state not to return to Kentucky for use.

~~(31) [(29)]~~ Revenue Form 51A157, "Certificate of Exemption - Water Used in Raising Equine", shall be presented to a retailer by a person regularly engaged in raising equine as a business to claim exemption for the purchase of water used to raise equine.

~~(32) [(30)]~~ Revenue Form 51A158, "Farm Exemption Certificate", shall be presented to a retailer by a person regularly engaged in the occupation of tilling and cultivating the soil for the production of crops, raising and feeding livestock or poultry; or raising and feeding llamas, alpacas, raites, buffalo, aquatic organisms, or cervids to claim exemption from sales and use tax on the purchase of certain tangible personal property.

~~(33) [(31)]~~ Revenue Form 51A159, "On-Farm Facilities Certificate of Exemption for Materials, Machinery and Equipment", shall be presented to a retailer by a farmer or jointly by a farmer and a contractor to claim exemption from sales and use tax on the purchase of materials, machinery and equipment which will be incorporated into the construction, repair, or renovation of on-farm facilities

ties exempt under the provisions of KRS 139.480.

~~(34) [(32)]~~ Revenue Form 51A160, "Application for Truck Part Direct Pay Authorization", shall be filed with the Department of Revenue by the owner of a motor vehicle, including a towed unit, qualifying for the repair and replacement part exemption provided under KRS 139.480(32)(a) to apply for the truck part direct pay authorization.

~~(35) [(33)]~~ Revenue Form 51A161, "Truck Part Direct Pay Authorization", shall be issued by the Department of Revenue to authorize motor carriers to report and pay directly to the department the sales and use tax on all purchases of repair and replacement parts for motor vehicles and to authorize retailers to sell motor vehicle repair and replacement parts directly to the authorized motor carrier without receipt of sales and use tax.

~~(36) [(34)]~~ Revenue Form 51A162, "Kentucky Sales and Use Tax Truck Part Direct Pay Authorization (TP DPA) Purchase Report", shall be filed annually by motor carriers using the truck part direct pay authorization to report purchases of repair and replacement parts for motor vehicle for the previous calendar year.

~~(37) [(35)]~~ Revenue Form 51A163, "Application for Charter Bus Part Direct Pay Authorization", shall be filed with the Department of Revenue by the owner of a charter bus qualifying for the repair and replacement part exemption provided under KRS 139.480(32)(b) to apply for a charter bus direct pay authorization.

~~(38) [(36)]~~ Revenue Form 51A164, "Charter Bus Direct Pay Authorization", shall be issued by the Department of Revenue to authorize charter bus carriers to report and pay directly to the Department the sales and use tax on all purchases of repair and replacement parts for charter buses, and to authorize retailers to sell charter bus repair and replacement parts directly to the charter bus carriers without receipt of sales and use tax.

~~(39) [(37)]~~ Revenue Form 51A165, "Kentucky Sales and Use Tax Charter Bus Direct Pay Authorization (CB DPA) Purchase Report", shall be filed annually by charter bus carriers using the charter bus direct pay authorization to report purchases of repair and replacement parts for carrier vehicles for the previous calendar year.

~~(40) [(38)]~~ Revenue Form 51A200, "Application for Kentucky Enterprise Initiative Act (KEIA) Tax Refund Program", shall be used by qualified businesses to apply for a refund of sales and use tax paid on purchases of materials used in an approved project.

~~(41) [(39)]~~ Revenue Form 51A205, "Kentucky Sales and Use Tax Instructions", shall be used by Kentucky sales and use tax permit holders as a guide in filing their sales and use tax returns and maintaining permit account information.

~~(42) [(40)]~~ Revenue Form 51A209, "Sales and Use Tax Refund Application", shall be completed by a Kentucky sales and use tax permit holder and submitted to the Department of Revenue within four (4) years from the date the tax was paid to apply for a refund of sales and use tax previously paid by the permit holder.

~~(43) [(41)]~~ Revenue Form 51A216, "Application for Pollution Control Tax Exemption Certificate", shall be completed by a business, governmental unit or institution to apply for a sales and use tax exemption on purchases of tangible personal property used to control or abate pollution.

~~(44) [(42)]~~ Revenue Form 51A222, "Certificate of Exemption for Alcohol Production Facilities", shall be presented to a retailer by a holder of an alcohol production tax exemption certificate or jointly by a contractor and the holder of an alcohol production tax exemption certificate to claim exemption from sales and use tax on materials and equipment that will become a part of an alcohol production facility as provided by KRS Chapter 247.

~~(45) [(43)]~~ Revenue Form 51A223, "Application for Alcohol Production Facility Tax Exemption Certificate", shall be completed by a business seeking exemption from sales and use tax on the purchase of materials and equipment that will become a part of an alcohol production facility as provided by KRS Chapter 247.

~~(46) [(44)]~~ Revenue Form 51A226, "Pollution Control Tax Exemption Certificate", shall be issued by the Department of Revenue to a business who has qualified for certain sales and use tax, corporation income, corporation license, and property tax benefits.

~~(47) [(45)]~~ Revenue Form 51A227, "Certificate of Resale (Schools)", shall be issued to a retailer by an exempt nonprofit elementary or secondary school or the organizations they sponsor

or that are affiliated with them to claim an exemption from sales and use tax on the purchase of tangible personal property that will be resold if the proceeds from the resale of the property is used solely for the benefit of the elementary or secondary schools or their students.

(48)[(46)] Revenue Form 51A228, "Application for Fluidized Bed Combustion Technology Tax Exemption Certificate", shall be completed by a business, governmental unit or organization and submitted to the Department of Revenue to apply for a sales and use tax exemption on the purchase of equipment and materials used in fluidized bed combustion technology.

(49)[(47)] Revenue Form 51A229, "Fluidized Bed Combustion Technology Tax Exemption Certificate", shall be issued by the Department of Revenue to a business, governmental unit or organization to advise that they qualify for corporation license tax, property tax, and sales and use tax benefits.

(50)[(48)] Revenue Form 51A241, "Registration for the Kentucky Sales and Use Tax Refund for Motion Picture and Television Production Companies", shall be completed by a motion picture production company and submitted to the Department of Revenue to register for a sales and use tax refund.

(51)[(49)] Revenue Form 51A242, "Application for Sales and Use Tax Refund for Motion Picture Production Company", shall be completed by a registered motion picture production company and submitted to the Department of Revenue within sixty (60) days after completion of the filming or production of the motion picture in Kentucky to request a refund of the Kentucky sales and use tax paid on purchases of tangible personal property made in connection with filming and producing motion pictures in Kentucky.

(52)[(50)] Revenue Form 51A250, "Application for Transient Merchant Permit", shall be completed by a transient merchant and filed with the clerk in the county in which the business is to be conducted, or if an urban county government, with the officer of the government who has responsibility for the issuance of business permits and licenses to obtain a permit before conducting any business in Kentucky.

(53)[(51)] Revenue Form 51A260, "Streamlined Sales Tax Agreement—Certificate of Exemption", shall be presented to a seller by a purchaser to claim that tangible personal property purchased from the seller qualifies for exemption.

(54)[(52)] Revenue Form 51A270, "Certificate of Sales Tax Paid on the Purchase of a Motor Vehicle", shall be issued by motor vehicle dealers to a non-resident purchaser of a motor vehicle on which the Kentucky sales tax has been paid.

(55) Revenue Form 51A280, "Out-Of-State Purchase-Use Tax Affidavit", shall be submitted to County Clerks by taxpayers purchasing tangible personal property from out-of-state for title or first-time registration.

(56) Revenue Form 51A290, "Information Sharing and Assignment Agreement For Designated Refund Claims", shall be submitted by an approved company or agency and its vendors and contractors who agree to share documentation with the Department of Revenue for refund claim under the Kentucky Enterprise Initiative Act, Signature Project, or Alternative Fuel, Gasification or Renewable Energy Facility.

(57) Revenue Form 51A291, "Application For Kentucky Signature Project Sales and Use Tax Refund", shall be completed by an approved company or agency in the construction of an approved Signature Project submitted to the Department of Revenue annually during the (12) years the project grant agreement is in effect.

(58) Revenue Form 51A292, "Expenditure Report for Signature Project Refunds", shall be submitted by a refund applicant to document expenditures and taxes paid on property and materials used in the construction of an approved Signature Project.

(59)[(53)] Revenue Form 51F008, "Federal Government Exemption from Kentucky Sales and Use Tax: Notification", shall be issued by the Department of Revenue to a federal government unit which in turn is presented to a retailer by the federal government unit to claim exemption from sales and use tax on purchases of tangible personal property to be used in the exempt governmental function.

(60)[(54)] Revenue Form 51F009, "Purchase Exemption Notification", shall be issued by the Department of Revenue to a resident nonprofit charitable, educational or religious institution to advise the entity of the assigned purchase exemption number additional information concerning the exemption from sales and use tax.

vises the entity of the assigned purchase exemption number additional information concerning the exemption from sales and use tax.

(61) (55)] Revenue Form 51F010, "Energy Direct Pay Authorization: Notification", shall be issued by the Department of Revenue to advise a Kentucky sales and use tax permit holder that it has been authorized to purchase energy and energy-producing fuels without paying or reimbursing the vendor for the sales and use tax and that they are required to report and pay directly to the Department of Revenue the sales and use tax on that portion of the cost price which is subject to tax pursuant to KRS 139.480(3).

(62) Revenue Form 51F010(a), "Utility Gross Receipts License Tax (UGRLT) Exemption Authorization", shall be issued by the Department of Revenue to advise a Kentucky sales and use tax permit holder that it has been authorized to purchase energy and energy-producing fuels without paying or reimbursing the vendor for the utility gross receipts license tax and that they are required to report and pay directly to the Department of Revenue the utility gross receipts license tax on that portion of the purchase price which is subject to tax. Revenue Form 51F010(b), "Energy Direct Pay - Utility Gross Receipts License Tax Exemption Authorization", shall be issued by the Department of Revenue to advise a Kentucky sales and use tax permit holder that it has been authorized to purchase energy and energy-producing fuels without paying or reimbursing the vendor for either the sales and use tax or the utility gross receipts license tax and that they are required to report and pay directly to the Department of Revenue the sales and use tax and the utility gross receipts license tax on that portion of the purchase price which is subject to tax.

Section 2. Telecommunications Provider Tax-Required Forms.(1) Revenue Form 75A001, "Telecommunications Tax Receipts Certification Form", shall be used by city and county taxing jurisdictions to certify tax receipts for prior fiscal year if applicable.

(2) Revenue Form 75A002, "Telecommunications Provider Tax Return", shall be used by telecommunications providers to report gross revenues subject to the excise tax and gross revenues tax, and by consumers to report retail purchases of multi-channel video programming services to report the due.

(3) Revenue Form 75A002 (I), "Instructions for Telecommunications Provider Tax Return", shall be used by telecommunications providers as a guide in filing their telecommunications provider tax return.

(4) Revenue Form 75A005, "Telecommunications Tax Complaint Form", shall be submitted to the Department of Revenue by local taxing authorities who express disagreement with the distribution of telecommunications tax to their jurisdiction.

(5) Revenue Form 75A900, "Telecommunications Tax Application", shall be used by telecommunications providers to register with the Department of Revenue.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Sales and use tax - referenced material:
  1. Revenue Form 51A101(a), "Sales and Use Tax Permit", March 2007[September, 2004];
  2. Revenue Form 51A101(b), "Sales and Use Tax Permit Update", March 2007;
  3. Revenue Form 51A101(c), "Kentucky Streamlined Sales and Use Tax (SST) Filing Information Permit", March 2007;
  4. Revenue Form 51A101(d), "Sales and Use Tax Permit Update (SST)", March 2007;
  - 5.[2-] Revenue Form 51A102, "Kentucky Sales and Use Tax Worksheet", January[.] 2008 [2007];
  - 6.[3-] Revenue Form 51A102E, "Kentucky Sales and Use Tax Worksheet - Electronic Funds Transfer", January[.] 2008 [2007];
  - 7.[4-] Revenue Form 51A103, "Kentucky Accelerated Sales and Use Tax Worksheet", January [.] 2008 [2007];
  - 8.[5-] Revenue Form 51A103E, "Kentucky Accelerated Sales and Use Tax Worksheet - Electronic Funds Transfer", January[.] 2008 [2007];
  9. [6-] Revenue Form 51A105, "Resale Certificate", January[.] 2005;
  - 10.[7-] Revenue Form 51A109, "Application for Energy Direct



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Pay Authorization (Sales and Use Tax and Utility Gross Receipts License Tax)", September[.] 2006;

11.[8-] Revenue Form 51A110, "Direct Pay Authorization", August [.] 1997;

12.[9-] Revenue Form 51A111, "Certificate of Exemption Machinery for New and Expanded Industry", January[.] 2007;

13.[40-] Revenue Form 51A112, "Application for Direct Pay Authorization", March[.] 2005;

14.[44-] Revenue Form 51A113, "Kentucky Consumer's Use Tax Worksheet", July[.] 2005;

15.[42-] Revenue Form 51A113(O9), "Consumer's Use Tax Return", August[.] 2005;

16.[43-] Revenue Form 51A115, "Order for Selected Sales and Use Tax Publications", April 2008 [.] February, 2006];

17. Revenue Form 51A116, "Use Tax Compliance Inquiry Worksheet", March 2008;

18.[44-] Revenue Form 51A125, "Application for Purchase Exemption Sales and Use Tax", January 2008 [February, 1993];

19.[45-] Revenue Form 51A126, "Purchase Exemption Certificate", August[.] 2004;

20.[46-] Revenue Form 51A127, "Out-of-State Purchase Exemption Certificate", April 2007 [December, 2006];

21.[47-] Revenue Form 51A128, "Solid Waste Recycling Machinery Exemption Certificate", March[.] 2005;

22. [48-] Revenue Form 51A129, "Kentucky Sales and Use Tax Energy Exemption Annual Return", September[.] 2005;

23. [49-] Revenue Form 51A130, "Kentucky Sales and Use Tax Monthly Aviation Fuel Tax Credit Schedule of Qualified Certificated Air Carriers ", August[.] 2005;

24. [20-] Revenue Form 51A131, "Kentucky Sales and Use Tax Monthly Aviation Fuel Dealer Supplementary Schedule", August[.] 2005;

25.[24-] Revenue Form 51A132, "Kentucky Sales and Use Tax Equine Breeders Supplementary Schedule", June[.] 2005;

26.[22-] Revenue Form 51A135, "Kentucky Sales Tax Motor Vehicle Sales Supplementary Schedule", August[.] 2006;

27.[23-] Revenue Form 51A143, "Purchase Exemption Certificate - Watercraft Industry", March[.] 2005;

28.[24-] Revenue Form 51A149, "Certificate of Exemption for Pollution Control Facilities", January[.] 2007;

29.[25-] Revenue Form 51A150, "Aircraft Exemption Certificate", January[.] 2005;

[26- Revenue Form 51A151, "Enterprise Zone Sales and Use Tax Exemption Certificate for Qualified Businesses Machinery and Equipment", January, 2007;

27. Revenue Form 51A152, "Enterprise Zone Sales and Use Tax Exemption Certificate for Building Materials", January, 2007;]

30.[28-] Revenue Form 51A154, "Certificate of Exemption Out-of-State Delivery for Aircraft, All Terrain Vehicle (ATV), Mobile/Manufactured Homes, Campers, Boats, Motors or Trailers", January[.] 2005;

31.[29-] Revenue Form 51A157, "Certificate of Exemption - Water Used in Raising Equine", July[.] 2005

32.[30-] Revenue Form 51A158, "Farm Exemption Certificate", July 2008[January][.]2007];

33.[34-] Revenue Form 51A159, "On-Farm Facilities Certificate of Exemption for Materials, Machinery and Equipment", July 2008[December][January,][2007];

34.[32-] Revenue Form 51A160, "Application for Truck Part Direct Pay Authorization", March[.] 2005;

35.[33-] Revenue Form 51A161, "Truck Part Direct Pay Authorization", December 2006 [October 2003];

36.[34-] Revenue Form 51A162, "Kentucky Sales and Use Tax Truck Part Direct Pay Authorization (TP DPA) Purchase Report", December, 2006 [October 2003];

37.[35-] Revenue Form 51A163, "Application for Charter Bus Part Direct Pay Authorization", June[.] 2005;

38.[36-] Revenue Form 51A164, "Charter Bus Direct Pay Authorization", August[.] 2006.

39.[37-] Revenue Form 51A165, "Kentucky Sales and Use Tax Charter Bus Direct Pay Authorization (CB DPA) Purchase Report", August[.] 2006.

40.[38-] Revenue Form 51A200, "Application or Kentucky Enterprise Initiative Act (KEIA) Tax Refund Program", March 2008

[July, 2005];

41.[39-] Revenue Form 51A205, "Kentucky Sales and Use Tax Instructions", July[.] 2005;

42.[40-] Revenue Form 51A209, "Sales and Use Tax Refund Application", May 2007 [March, 2005];

43.[44-] Revenue Form 51A216, "Application for Pollution Control Tax Exemption Certificate", March[.] 2005;

44.[42-] Revenue Form 51A222, "Certificate of Exemption for Alcohol Production Facilities", January[.] 2007;

45.[43-] Revenue Form 51A223, "Application for Alcohol Production Facility Tax Exemption Certificate", July[.] 1980;

46.[44-] Revenue Form 51A226, "Pollution Control Tax Exemption Certificate", March[.] 2005;

47.[45-] Revenue Form 51A227, "Certificate of Resale (Schools)", May 2007 [August, 1984];

48.[46-] Revenue Form 51A228, "Application for Fluidized Bed Combustion Technology Tax Exemption Certificate", May 2007 [January, 1987];

49.[47-] Revenue Form 51A229, "Fluidized Bed Combustion Technology Tax Exemption Certificate", January[.] 2008 [1987];

50.[48-] Revenue Form 51A241, "Registration for the Kentucky Sales and Use Tax Refund for Motion Picture and Television Production Companies", May 2007 [February, 1987];

51.[49-] Revenue Form 51A242, "Application for Sales and Use Tax Refund for Motion Picture Production Company", May 2007 [January, 1987];

52.[50-] Revenue Form 51A250, "Application for Transient Merchant Permit", April, 2005;

53.[54-] Revenue Form 51A260, "Streamlined Sales Tax Agreement - Certificate of Exemption", August[.] 2006;

54.[52-] Revenue Form 51A270, "Certificate of Sales Tax Paid on the Purchase of a Motor Vehicle", August[.] 2006;

55. Revenue Form 51A280, "Out-Of-State Purchase-Use Tax Affidavit", July 2007;

56. Revenue Form 51A290, "Information Sharing and Assignment Agreement for Designated Refund Claims", October 2007;

57. Revenue Form 51A291, "Application for Kentucky Signature Project Sales and Use Tax Refund", October 2007;

58. Revenue Form 51A292, "Expenditure Report for Signature Project Refunds", October 2007;

59. [53-] Revenue Form 51F008, "Federal Government Exemption from Kentucky Sales and Use Tax Notification", January 2008 [December, 1998];

60. [54-] Revenue Form 51F009, "Purchase Exemption Notification", January 2008 [December, 1998];

61.[55-] Revenue Form 51F010, "Energy Direct Pay Authorization: Notification", January 2008 [December, 1998];

62. Revenue Form 51F010(a), "Utility Gross Receipts License Tax (UGRLT) Exemption Authorization", January 2008;

63. Revenue Form 51F010(b), "Energy Direct Pay - Utility Gross Receipts License Tax Exemption Authorization", January 2008;

(b) Telecommunications provider tax - referenced material:

1. Revenue Form 75A001, "Telecommunications Tax Receipts Certification Form", December[.] 2005;
2. Revenue Form 75A002, "Telecommunications Provider Tax Return", December[.] 2005;
3. Revenue Form 75A002 (I), "Instructions for Telecommunications Provider Tax Return", July[.] 2006;
4. Revenue Form 75A005, "Telecommunications Tax Complaint Form", October[.] 2006;
5. Revenue Form 75A900, "Telecommunications Tax Application", December[.] 2005;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, [200 Fair Oaks Lane], Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner  
 APPROVED BY AGENCY: August 14, 2008  
 FILED WITH LRC: August 14, 2008 at 4 p.m.  
 CONTACT PERSON: Richard Dobson, Executive Director,  
 Office of Sales and Excise Taxes, Department of Revenue, Fi-

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nance and Administration Cabinet, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-5523, fax (502) 564-2906.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Richard Dobson

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the administration of Sales and Use Tax and Telecommunications Excise and Gross Revenues Tax by the Department of Revenue.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for the Department of Revenue to meet the requirements of KRS Chapter 13A.110, which requires that forms required to be submitted by a regulated entity shall be included in an administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the administration of the Sales and Use Tax and the Telecommunications Excise and Gross Revenues Tax by the Department of Revenue.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the required revenue forms used in the administration of the Sales and Use Tax and Telecommunications Excise and Gross Revenues Tax by the Department of Revenue.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky taxpayers and their representatives will be affected by the listing of forms administered by the Department of Revenue in an administrative regulation. Local government will be affected, to the extent they utilize forms administered by the Department of Revenue. The Department of Revenue will be affected to the extent that it administers the referenced forms.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions will have to be taken by the taxpayers or local governments to comply with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no anticipated cost incurred by the taxpayer or local government.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Taxpayers will be able to reference all sales and use and telecommunications excise and gross revenues tax forms in 1 location.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The Department of Revenue will not incur additional costs as the result of this regulation.

(b) On a continuing basis: The Department of Revenue will not incur additional costs as a result of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Revenue agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does not require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because the requirements of this regulation apply to every taxpayer.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Revenue will be impacted by this administrative regulation.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(3)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional expenditures or revenue for the Commonwealth or local government agencies.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### FINANCE AND ADMINISTRATION CABINET

#### Department of Revenue

#### Office of Sales and Excise Taxes

#### (Amended After Comments)

#### 103 KAR 30:091. Sales to farmers.

RELATES TO: KRS 139.260, 139.470, 139.480

STATUTORY AUTHORITY: [KRS Chapter 13A,] 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. The administrative regulation is necessary to interpret the sales and use tax law as it relates to sales to farmers.

Section 1. Definitions (1) "Attachments" means tangible personal property necessary for the operation of farm machinery or implements that are purchased primarily to improve efficiency or to diversify the function which the machinery or implements are ca-

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pable of performing. Attachments shall include replacement attachments and repair and replacement parts.

(2) "On-farm facility" means land, ponds, streams, fencing and structures within the premises of property used in the pursuits provided under KRS 139.480 for:

(a) Storing, drying, processing, and handling grain and soybean;

(b) Raising poultry or livestock;

(c) Breeding and producing ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-products;

(d) Breeding and producing llama and alpaca hides, breeding stock, fiber and wool products, meat, and llama and alpaca by-products;

(e) Breeding and producing buffalo hides, breeding stock, meat, and buffalo by-products;

(f) Raising aquatic organisms by a person regularly engaged in the business of producing products of aquaculture, as defined in KRS 260.960, for sale; and

(g) Breeding and producing cervid hides, breeding stock, meat, and cervid by-products.

(3) "Production of crops" means the occupation of tilling the soil as a business to produce hay, tobacco, soybeans, fruit, vegetables, timber, flowers, shrubs, etc. for sale.

Section 2. Exempt "farm machinery" shall include motor or animal-drawn or operated farm machinery or implements. The following list contains examples of items which may qualify for exemption if used exclusively and directly for farming as provided in KRS 139.480(11), in addition to the more commonly known items of "farm machinery":

(1) All terrain vehicles - utility (ATVs);

(2) Automatic and portable feeding equipment;

(a) Livestock creep feeders;

(b) Poultry feeders; and

(c) Round bale feeders.

(3) Automatic egg gathering systems;

(4) Automatic washers;

(5) Automatic waterers;

(6) Brooders;

(7) Bulk tanks (mechanical);

(8) Bushhogs;

(9) Chain saws;

(10) Cleaning machinery (mechanical);

(11) Clippers for livestock;

(12) Coke stoves for curing tobacco;

(13) Cooling units and cooling fans;

(14) Egg processing machinery;

(15) Farm wagons;

(16) Grain and hay elevators;

(17) Hay mowers;

(18) Heaters (portable);

(19) Incubators;

(20) Insecticide sprayers (hand-held);

(21) Irrigation systems;

(22) Log splitters;

(23) Milking machines;

(24) Posthole diggers (mechanical);

(25) Roller mills;

(26) Seed sowers (automatic);

(27) Shop welders and other machinery (mechanical) exclusively for use to maintain other farm machinery;

(28) Silo unloaders (augers);

(29) Tilt table for livestock;

(30) Tobacco curing machinery;

(31) Tobacco setter;

(32) Tobacco transplant system machinery; and

(a). Clipping;

(b). Heating;

(c). Injector systems;

(d). Seeding; and

(e). Ventilation.

(33) Tractor mounted sprayer.

Section 3. Exempt Chemicals. This category of exempt items

refers to chemicals used in the production of crops as a business to improve quality and quantity of plant growth or for use in raising of livestock, poultry, ratite birds, llamas, alpacas, buffalos, aquatic organisms, and cervids that function as an insecticide, fungicide, herbicide, or rodenticide. The following list contains examples of items that may qualify for the farm chemical exemption as provided in KRS 139.480(8) in addition to the more commonly known items of farm chemicals:

(1) Adjuvant to enhance herbicide coverage of crops;

(2) Antiseptic wipes to clean cows' udders;

(3) Insecticidal dipping chemicals;

(4) Insecticidal ear tags;

(5) Lime and hydrated lime for disinfectant;

(6) Methyl bromide gas and similar tobacco chemicals; and

(7) Seed flow enhancers to optimize seed planting and spacing, including talc and graphite.

Section 4. Exempt Feed. The following list contains examples of items that may qualify for the feed exemptions as provided in KRS 139.480:

(1) Bag and block salt;

(2) Dietary supplements as a feed additive;

(3) Feed for:

(a) Alpaca;

(b) Aquatic organisms;

(c) Beef cattle;

(d) Buffalo;

(e) Cervid;

(f) Dairy cattle;

(g) Feeder animals;

(h) Goats;

(i) Hogs;

(j) Llamas;

(k) Poultry;

(l) Ratite birds; and

(m) Sheep.

(4) Milk replacer;

(5) Mineral blocks;

(6) Protein blocks;

(7) Protein supplements; and

(8) Special medicated feed mixes except separate medicine purchases.

Section 5. Exempt On-farm Facilities. The list in this subsection shall serve as an example of items that may qualify for the exemption provided for all on-farm facilities under KRS 139.480:

(1) Branding iron heaters and irons;

(2) Bucket racks;

(3) Building materials;

(a) Concrete;

(b) Gravel;

(c) Guttering;

(d) Insulation;

(e) Lumber;

(f) Nails;

(g) Paint;

(h) Rock;

(i) Roofing materials; and

(j) Sand.

(4) Calf crates;

(5) Calf hutches;

(6) Corrals (portable);

(7) Culvert pipe;

(8) Drainage tile;

(9) Erosion mats;

(10) Farm gates;

(11) Farrowing crates;

(12) Feeding system materials and equipment:

(a) Feed buckets;

(b) Feed bunks for farm wagons;

(c) Hoses;

(d) Nozzles;

(e) Pipelines; and

(f) Tubes.

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(13) Fence chargers (electric);

(14) Fencing materials;

(a) Insulators and other components used in an electrical fence system;

(b) Planks;

(c) Posts;

(d) Staples; and

(e) Wire.

(15) Hog holding crates;

(16) Insect control (electric);

(17) Livestock chutes;

(18) Livestock headgates;

(19) Livestock oilers;

(20) Manure pit for livestock;

(21) Pond sealers;

(22) Salt and mineral feeders;

(23) Silage covers;

(24) Silos;

(25) Silo covers;

(26) Water hydrants; and

(27) Water pipe including plastic and other material.

Section 6. Packaging Materials. The following list contains examples of items exempt if used in the packaging of products for sale in addition to the exemption provided for twine and wire used for baling hay and straw in KRS 139.480(27):

(1) Bags or sacks;

(2) Baskets;

(3) Crates;

(4) Twine; and

(5) Wire.

Section 7. Farm Work Stock. The following list contains examples of items of farm work stock which may qualify for exemption as provided in KRS 139.480(6):

(1) Donkeys;

(2) Draft horses;

(3) Guard dogs, including the Pyrenees and Polish Tatra breeds, to protect sheep, goats, and other livestock;

(4) Herd dogs for herding sheep, cattle, or other livestock;

(5) Jacks; and

(6) Mules.

Section 8. Exempt Attachments: Repair and Replacement Parts. (1) Attachments purchased for use on farm machinery which are necessary to the operation of the machinery or implements are exempt from tax. Examples that may be included in the exempt attachment category are as follows:

(a) Dual wheel assemblies;

(b) Hitches;

(c) Hydraulic systems;

(d) Water tanks; and

(e) Weights.

(2) Repair and replacement parts purchased for use on farm machinery which are necessary to the operation of the machinery are exempt from tax. Examples that may be included in the repair and replacement parts category are:

(a) Batteries;

(b) Bolts;

(c) Chain saw repair parts;

(d) Cutting parts;

(e) Fan belts;

(f) Miscellaneous motor repairs;

(g) Mufflers;

(h) Plow points;

(i) Spark plugs;

(j) Springs;

(k) Tires; and

(l) V-belts.

Section 9. Taxable Items. The following categories of items are not excluded from sales and use tax as provided by KRS 139.480 and are subject to tax:

(1) Nonmechanical containers and nonmechanical storage

facilities:

(a) Egg baskets;

(b) Feeders;

(c) Milk cans;

(d) Milk storage tanks;

(e) Oil and gas storage tanks;

(f) Wash tanks; and

(g) Watering tanks.

(2) Hand tools, and wholly hand-operated equipment:

(a) Axes;

(b) Barn brooms;

(c) Barn forks;

(d) Brooms;

(e) Grease guns;

(f) Hoes;

(g) Jacks;

(h) Ladders;

(i) Pitchforks;

(j) Pliers;

(k) Post hole diggers (manual);

(l) Rakes;

(m) Shovels;

(n) Tobacco balers (hand operated);

(o) Wheelbarrows; and

(p) Wrenches.

(3) Accessories not essential to the operation of the farm machinery itself except if sold as a part of an assembled unit:

(a) Air conditioning units;

(b) Cabs;

(c) Canopies;

(d) Cigarette lighters;

(e) Deluxe seats;

(f) Lubricators;

(g) Radios;

(h) Seat cushions or covers; and

(i) Tool or utility boxes.

(4) Miscellaneous equipment, materials, and supplies:

(a) Antifreeze;

(b) Bird seed;

(c) Bromo gas applicators;

(d) Bumper hitch trailers;

(e) Calcium chloride;

(f) Chains;

(g) Charcoal for cistern filtration;

(h) Chicken bedding;

(i) Chicken litter;

(j) Chicken transport cages;

(k) Coke for curing tobacco;

(l) Dog food;

(m) Feed for work stock animals;

(n) Greases;

(o) Hydraulic fluid;

(p) Identification tags;

(q) Lawn and garden equipment:

1. Push mowers;

2. Riding lawn mowers;

3. Rotor tillers;

4. Weedeaters; and

5. Zero turn mowers.

(r) Lubricants;

(s) Milk strainers;

(t) Netting wrap;

(u) Oils;

(v) Rope;

(w) Shrink wrap;

(x) Snaps and washers;

(y) Straw;

(z) Tobacco canvas and other plant bed covers;

(aa) Tobacco knives;

(bb) Tobacco spears;

(cc) Tobacco sticks;

(dd) Tobacco transplant system materials:

1. Plastic;

2. Trays; and

- 3. Ventilation curtains.
- (ee) Tractor paint;
- (ff) Transmission fluid;
- (gg) Truck batteries;
- (hh) Truck tires;
- (ii) Wood shavings; and
- (jj) Work shoes and boots.

(5) Items which are incorporated into real property, except some materials incorporated into the construction, renovation, or repair of on-farm facilities as provided in KRS 139.480:

- (a) Building materials:
  - 1. Concrete;
  - 2. Gravel;
  - 3. Guttering;
  - 4. Insulation;
  - 5. Lumber;
  - 6. Nails;
  - 7. Paint;
  - 8. Rock;
  - 9. Roofing materials; and
  - 10. Sand.
- (b) Fencing materials.

1. Insulators and other components used in an electrical fence system;

- 2. Planks;
- 3. Posts;
- 4. Staples; and
- 5. Wire.

(6) Items purchased for use in raising, feeding, or breeding of horses except water as provided in KRS 139.470(14);

(7) Items purchased for animal health care. The following list contains items that may serve as examples of taxable animal health care products:

- (a) Castrators;
- (b) Copper sulfate;
- (c) Dehorers;
- (d) Drench devices;
- (e) Elastrator rings and bands;
- (f) Livestock oil unless containing insecticide;
- (g) Medicines to be administered as feed additive, for internal parasitic control, or otherwise;
- (h) Veterinary instruments:

- 1. Needles;
- 2. Operating tables; and
- 3. Syringes.
- (i) Vitamins; and
- (j) Wormers.

**Section 10. Exemption Certificates.** (1) A farmer shall issue a Farm Exemption Certificate, Form 51A158 or Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form 51A260, which are incorporated by reference in 103 KAR 3:020, for the exempt purchase of tangible personal property other than tangible personal property for incorporation into the construction, repair or renovation of on-farm facilities covered under KRS 139.480.

(2) A farmer shall issue an On-farm Facilities Certificate of Exemption for Materials, Machinery and Equipment, Form 51A159, which is incorporated by reference in 103 KAR 3:020, for the exempt purchase of tangible personal property for incorporation into the construction, repair or renovation of on-farm facilities exempt under the provisions of KRS 139.480. A farmer shall issue a separate, individual certificate for new construction, repairs, or renovations. Unless the certificate has an expiration date when submitted jointly with a contractor, the certificate shall remain effective for each project type (new construction, repairs, or renovations) until the purchaser notifies the seller in writing that it is no longer valid.

(3) A contractor may jointly execute an On-farm Facilities Certificate of Exemption for Materials, Machinery, and Equipment, Form 51A159 with a farmer for building materials, machinery, and equipment that are for incorporation into the construction, repair or renovation of an on-farm facility. A contractor shall not use the certificate for the purchase or rental/lease of construction equipment, consumable supplies or other tangible personal property that

is not for incorporation into the on-farm facility. A jointly executed On-farm Facilities Certificate of Exemption for Materials, Machinery, and Equipment, Form 51A159, with a contractor shall be acceptable only for purchases made for periods within the effective dates indicated on the certificate at the time of purchase. A contractor shall jointly execute a new certificate with a farmer for additional purchases of materials, machinery, and equipment required for the same project after the initial expiration date or for additional projects.

**Section 11. Service Providers.** (1) Persons engaged in spraying fertilizer, hauling agricultural lime, or providing other services to persons regularly engaged in farming shall not qualify for the farm machinery exemption.

(2) The service provider shall not execute an exemption certificate on behalf of the farmer for the purchase of fertilizer, agricultural lime or other tangible personal property used to perform the service.

**Section 12. [Farm Machinery.]** The farm machinery exemption provided at KRS 139.480(10) applies to motor or animal-drawn or operated farm machinery and implements, including attachments which are necessary to the operation of such machinery and implements. To qualify for exemption, the property must be used in the occupation of tilling the soil for the production of crops (including timber, flowers, fruits, shrubs, etc.) as a business or in the occupation of raising and feeding livestock or poultry or of producing milk, eggs, wool, etc., for sale. The exclusion is not limited to items commonly referred to as "farm machinery" but includes all machinery directly used in the activities listed above.

**Section 2. Exempt Items.** Examples of items which qualify for exemption in addition to the more commonly known items of "farm machinery" are irrigation systems, tobacco curing equipment, farm wagons, portable insecticide sprayers, chain saws, mechanical cleaning equipment, mechanical shop equipment, mechanical posthole diggers, silo unloaders (augers), grain and hay elevators, milking machines, automatic washers, mechanical bulk tanks, cooling units, brooders, incubators, automatic egg gathering systems, egg processing equipment, automatic feeding equipment, automatic waterers.

**Section 3. Taxable Items.** The following categories of items are excluded from the meaning of the term "farm machinery" and are subject to tax:

- (1) Containers and storage facilities such as milk cans, wash tanks, watering tanks, egg baskets, nonmechanical silos, nonmechanical feeders, and oil and gas storage tanks;
- (2) Hand tools, and wholly hand-operated equipment such as wheelbarrows, hoes, rakes, pitchforks, shovels, brooms, wrenches, pliers, and grease guns;
- (3) Attachments (accessories) not essential to the operation of the machinery itself (except when sold as a part of an assembled unit) such as cigarette lighters, radios, canopies, air conditioning units, cabs, deluxe seats, tool or utility boxes, and lubricators.
- (4) Miscellaneous farm equipment and supplies such as tobacco sticks, tobacco canvas, milk strainers, lawn and garden equipment, oils and greases, and coke;
- (5) Items which are incorporated into real property such as stalls, stanchions, drainage tile, fencing materials, and building materials excepting materials incorporated into the construction, renovation, or repair of:
  - (a) On-farm grain or soybean facilities;
  - (b) On-farm chicken-raising facilities.

**Section 4. Attachments; Repair and Replacement Parts.** (1) "Attachments" to farm machinery or farm implements are tax exempt both upon original purchase and when replaced. The term "attachments" refers to items purchased for use in connection with farm machinery or farm implements primarily to improve efficiency or to diversify the function which the machinery or implements are capable of performing. Included in the "attachment" category are: hydraulic systems, weights, hitches, dual wheel assemblies, other items necessary to the operation of machinery or implements.

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(2) "Repair and replacement parts" purchased for use on farm machinery which are necessary to the operation of such machinery are exempt from tax. Included in the "repair and replacement part" category are: batteries, tires, fan belts, mufflers, spark plugs, miscellaneous motor repairs, plow points, cutting parts, v belts, bolts, springs, etc.

**Section 5. Exemption Certificates.** The sales and use tax law sets forth various types of tangible personal property which may be purchased tax exempt by persons engaged in farming. The exemptions may be found at KRS 139.470(2) and KRS 139.480(4), (5), (6), (7), (8), (10), (13), (14) and (15). The appropriate exemption certificates which a vendor must have on file executed by a farmer to substantiate the nontaxable status of such sales are:

(1) A properly executed Farm Machinery Exemption Certificate, Revenue Form 51A148 (3-88), for farm machinery and attachments;

(2) A properly executed Agricultural Certificate of Exemption, Revenue Form 51A106 (4-86), for seed, feed, fertilizer, repair and replacement parts for farm machinery, nonreturnable containers, gasoline, special fuels, liquefied petroleum gas and repair and replacement parts for machinery and equipment which are part of an on-farm grain or soybean facility;

(3) A properly executed Certificate of Exemption for On-Farm Grain or Soybean Facilities, Revenue Form 51A148-S1 (3-88), for machinery, equipment, attachments and any materials incorporated into the construction, renovation or repair of on-farm grain or soybean facilities; and

(4) A properly executed Certificate of Exemption for On-Farm Chicken Raising Facilities, Revenue Form 51A153 (6-90), for equipment, machinery, attachments, repair and replacement parts and any materials incorporated into the construction, renovation or repair of on-farm facilities used exclusively for raising chickens.

**Section 6.** The exemption certificates specified in Section 5 of this administrative regulation are hereby incorporated by reference and may be obtained without charge from the Revenue Cabinet, Frankfort, Kentucky 40601. The certificates may be inspected and copied at the Frankfort office of the Revenue Cabinet located on the fourth floor of the Capitol Annex Building or the Taxpayer Service Centers listed below between the hours of 8 a.m. and 4:30 p.m. (local time).

### Revenue Cabinet Taxpayer Service Centers

Ashland  
P.O. Box 687  
1422 Winchester Avenue  
Ashland, Kentucky 41105-0687  
(606) 329-9982  
Bowling Green  
P.O. Box 2040  
1502 Weston Avenue  
Bowling Green, Kentucky 42101  
(502) 843-5470  
Corbin  
1707 Eighteenth Street  
Falls Road Plaza, Suite 5  
Corbin, Kentucky 40701  
(606) 528-3322  
Hazard  
233 Birch Street  
P.O. Box 419  
Hazard, Kentucky 40701  
(606) 439-2388  
Hopkinsville  
Hammond Plaza, P.O. Box 695  
Hopkinsville, Kentucky 42240  
(502) 887-2521  
Lexington  
301 East Main Street  
Suite 500  
Lexington, Kentucky 40507  
(606) 233-3837  
Louisville  
620 South Third Street, Suite 102

Louisville, Kentucky 40202-2402  
(502) 588-4512  
Northern Kentucky  
Kentucky Executive Building  
Room 210  
2055 Dixie Highway  
Fort Mitchell, Kentucky 41011  
(606) 292-6603  
Owensboro  
311 West Second Street  
P.O. Box 628  
Owensboro, Kentucky 42301  
(502) 686-3301  
Paducah  
555 Jefferson Street  
P.O. Box 2336  
Paducah, Kentucky 42002-2336  
(502) 444-8148  
Pikeville  
1279 North Mayo Trail  
Pikeville, Kentucky 41501  
(606) 437-4075

Section 7.] The examples of taxable and nontaxable items contained in this administrative regulation are for illustrative purposes only and are not intended to be all inclusive.

Section 13. (1) This administrative regulation shall replace Revenue Policies 51P090, 51P100, 51P105, 51P120, 51P130, and 51P135.

(2) Revenue Policies 51P090, 51P100, 51P105, 51P120, 51P130, and 51P135 are hereby rescinded and shall be null, void, and unenforceable.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: August 14, 2008

FILED WITH LRC: August 14, 2008 at 4 p.m.

CONTACT PERSON: Richard Dobson, Executive Director, Office of Sales and Excise Tax, Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-5523, fax (502) 564-2906.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Richard Dobson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation interprets the sales and use tax law as it relates to sales to farmers.

(b) The necessity of this administrative regulation: This regulation is necessary to provide interpretation of the sales and use tax as it relates to sales to farmers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation clarifies what equipment farmers can buy exempt from tax and preserves previously published guidance.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment generally maintains historical administrative guidance provided to the farming community. However, agricultural lime haulers that are currently executing agricultural exemption certificates on behalf of farmers must cease this practice and only submit certificates they are directly eligible for such as resale.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to preserve and clarify information previously provided in policies that are being rescinded.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue

nue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: The language in the amended regulation provides expanded guidance that will assist both farmers and their suppliers when determining taxable and exempt transactions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 90,000 farms in the Commonwealth that may rely on this guidance, as well as their related associations and suppliers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The affected parties will look to the statutory and regulatory provisions referenced in this regulation for guidance regarding farming related exemptions for sales and use tax.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be minimal costs if any associated with compliance because of the informational and replacement nature of this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will be maintaining compliance with the true administrative authority regarding sales and use tax exemptions for farming operations. Thus, exposure to assessment upon audit and corresponding penalties and interest will be avoided.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Nothing beyond normal administrative expenses for regulation promulgation.

(b) On a continuing basis: Nothing beyond routine administrative duties.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General department operating funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not.

(9) TIERING: Is tiering applied? Tiering does not apply to this administrative regulation. This regulation applies to all farming operations and corresponding suppliers; therefore, there are no separate "tiers" to regulate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue, Office of Sales and Excise Taxes, Division of Sales and Use Tax will be impacted.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1), 139.710.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation gen-

erate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? Nothing

(d) How much will it cost to administer this program for subsequent years? Nothing

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### ENVIRONMENTAL AND PUBLIC PROTECTION CABINET Department for Environmental Protection Division of Water (Amended After Comments)

##### 401 KAR 6:001. Definitions for 401 KAR Chapter 6.

RELATES TO: KRS 223.400-223.460, 223.991, **EO 2008-507, 2008-531**

STATUTORY AUTHORITY: KRS 223.420(1)(e), 223.435, 224.10-100, 224.70-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction. **EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.** This administrative regulation is necessary to define terms used by the cabinet in 401 KAR Chapter 6.

Section 1. Definitions. (1) "Abandon" means to seal or plug a well to prevent entry of surface water or contaminants and to prevent mixing of water from different water-bearing formations.

(2) "Annular space" means the opening between a well-bore or excavation and the well casing or between an outer casing pipe and an inner casing pipe or liner pipe.

(3) "Aquifer" means a water-bearing formation that transmits water in sufficient quantity to supply a well.

(4) "Bedrock" means a consolidated rock exposed at the surface of the earth or overlain by unconsolidated materials or soils.

(5) "Bentonite" means a clay in the montmorillonite series with a predominance of sodium as its major cation, having the property of expanding several times its original volume if saturated, and used to seal or plug well annuluses and well bores.

(6) "Board" is defined by KRS 223.400(2).

(7) "Bridging" means the deliberate or accidental closing or plugging of a section of a drill hole or annulus, **beneath which is an open borehole or unfilled annulus.**

(8) "Confining zones" and "confining formation" **means** [mean] a body of sufficiently impermeable material **as** to impede the vertical migration of groundwater.

(9) "Consolidated formation" means a geological formation that is bedrock.

(10) "Construction" means all acts necessary for obtaining groundwater by wells, including drilling or excavation of the well and installation or modification of casing, but excluding the installation of permanent pumps and pumping equipment.

(11) "Driller" means "water well driller" as defined by KRS 223.400(8).

(12) "Drilling derived waste" or "DDW" means soils, drill cuttings, drilling fluids, product-contaminated water, and decontamination rinseate.

(13) "Finished ground surface" means the final or permanent elevation of the ground surface at the site of the well.

(14) "Grout-pipe method" means that grout is emplaced into the **borehole** [bore hole] or annulus via gravity flow through a pipe or apparatus with a funnel or hopper-like top.

(15) "High solids sodium bentonite" means bentonite contain-

ing a minimum of thirty (30) percent solids.

(16) "Impervious" means a material that will not permit the passage of water at a rate greater than  $1 \times 10^{-7}$  centimeters per second (cm/sec).

(17) "Modification" means a change, replacement, or alteration of the water well.

(18) "Monitoring well" means a well constructed if the actual or intended use in whole or part is the removal of water for sampling, measuring, or test pumping for scientific, engineering, or regulatory purposes.

(19) **"Natural person" means an individual person distinguished from a person as defined in KRS 224.01-010(17).**

(20) "Pit" means a hole, shaft, or cavity in the ground.

(21) [(20)] "Pitless well adapter" means a device designed for attachment to one (1) or more openings through a well casing.

(22) [(21)] "Pitless well unit" means an assembly that extends from the upper end of the well casing to above the finished ground surface.

(23) [(22)] "Perched" means a region in the unsaturated zone separated from an underlying aquifer where the materials are locally saturated because they overlie a low-permeability unit.

(24) [(23)] "Potable water" means water that meets the provisions of 401 KAR Chapter 8, the quality of which is approved by the cabinet for human consumption.

(25) [(24)] "Sealing materials" means neat cement, cement-bentonite grout, or bentonite. Drill cuttings are not sealing materials.

(26) [(25)] "Static water level" means the level at which water stands in a well when water is not being taken from the aquifer either by pumping or by free flow.

(27) [(26)] "Unconsolidated formation" means a loose, non-lithified geological formation such as soil, sand, or gravel.

(28) [(27)] "Undesirable geologic formation" means a geologic formation with physical characteristics or water quality not conducive to the construction and use of a well.

(29) [(28)] "Undesirable groundwater" means groundwater not suitable for human or animal consumption, irrigation, manufacturing process water, or cooling.

(30) [(29)] "Water supply well" means [.] "water well" [.] or "well" as defined by KRS 223.400(7).

(31) **"Well development" means the act of repairing damage to the formation caused by drilling procedures and increasing the porosity and permeability of the materials surrounding the intake portion of the well.**

(32) [(30)] "Well unsuitable for its intended use" means a well:

- (a) The use of which has been permanently discontinued;
- (b) That is in such a state of disrepair that it cannot be used to supply groundwater;
- (c) That presents a health or safety hazard;
- (d) From which usable groundwater is not obtainable; or
- (e) With boreholes that:
  1. Are dry;
  2. Have caved in; or
  3. Are unsuitable for further development and well construction.

HENRY "HANK" LIST, Deputy Secretary

For LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: August 14, 2008

FILED WITH LRC: August 14, 2008 at 11 a.m.

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#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peter Goodmann, Branch Manager

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms used by the cabinet in 401 KAR Chapter 6.

(b) The necessity of this administrative regulation: This regulation defines the terms used in the chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide definitions for terms used throughout the chapter so that the other regulations in the chapter may be properly interpreted and enforced.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments clarify a definition for bridging, add definitions for "natural person" and "well development", and correct grammatical errors.

(b) The necessity of the amendment to this administrative regulation: The amendments were necessary to clarify meanings of terms used throughout the chapter.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction, and KRS 224.70-100 authorizes the cabinet to establish administrative regulations to protect water quality. These amendments bring the existing regulation up to date with current standards of well construction and water quality standards.

(d) How the amendment will assist in the effective administration of the statutes: The amendments were necessary to clarify meanings of terms used throughout the chapter.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any individual, business, organization, or government entity using the regulations in 401 KAR Chapter 6 will now be able to find the definitions for terms used in those regulations.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected entities will be able to understand the terms used throughout 401 KAR Chapter 6.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There are no initial costs as a result of creating this administrative regulation.

(b) On a continuing basis: There are no continuing costs as a result of creating this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase fees.

(9) TIERING: Is tiering applied? (Explain why or why not): Tiering is not applied because definitions do not require tiering.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government



(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Government entities using these regulations will now be able to find definitions for terms used throughout the chapter.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction. KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? There will be no cost.

(d) How much will it cost to administer this program for subsequent years? There will be no cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**  
**Department for Environmental Protection**  
**Division of Water**  
**(Amended After Comments)**

**401 KAR 6:310. Water supply well construction practices and standards.**

RELATES TO: KRS 223.400 – [through] 223.460, 223.991, 224.01-010, EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 151.110, 223.420(1)(e), 223.435, 224.10-100, 224.70-100, 224.70-110

NECESSITY, FUNCTION AND CONFORMITY: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction. **EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.** This administrative regulation provides minimum standards and requirements for construction, modification, and abandonment of water supply wells. [the commercial practice of water well drilling. These requirements are necessary to ensure that the completed well provides an appropriate quality of product to the consumer while protecting the ground water resources of the commonwealth. This administrative regulation fulfills the mandate of KRS 223.435 to promulgate administrative regulations establishing standards of practice for water well construction and of KRS 224.70-100 to protect water quality.]

Section 1. General Requirements. (1) Certified water supply well driller requirement. Each water supply well subject to this administrative regulation shall be constructed, modified, or abandoned only by natural persons certified to drill water supply wells in accordance with KRS 223.425 and 401 KAR 6:320.

(2) Construction and well performance requirement. Permanent and temporary water supply wells shall be constructed, modified, and abandoned in such a manner as to prevent the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials.

(3) Reporting requirement. Within sixty (60) days after a water

supply well has been completed, modified, or abandoned the certified well driller shall submit a report of well construction, modification, or abandonment to the cabinet using the Uniform Kentucky Well Construction Record or the Uniform Kentucky Well Maintenance and Plugging Record, as appropriate.

(a) All information about the depth and the materials used in the water supply well construction, modification, or abandonment shall also be recorded.

(b) [The report shall be submitted on the Uniform Kentucky Well Construction Record.

(c) [The certified water supply well driller shall complete the bacteriological section on the Uniform Kentucky Well Construction Record to report the results of the coliform sampling as required in Section 9(6)(9) of this administrative regulation. The certified driller shall retain the results of the bacteriological sample analysis.

(4) Records to water supply well owner. Within sixty (60) days after the water supply well has been completed or modified, the certified well driller shall provide the following material to the well owner:

(a) A copy of the Uniform Kentucky Well Construction Record or the Uniform Kentucky Well Maintenance and Plugging Record, as appropriate;

(b) A copy of the results of bacteriological sample analysis collected in accordance with Section 9(6)(9) of this administrative regulation;

(c) Water Well Owner's Guide; and

(d) A copy of analytical results if additional water quality analysis is conducted.

(5) The certified well driller shall tag each well constructed or modified with a well identification number tag provided by the cabinet.

(a) An existing well identification number shall be included on the Uniform Kentucky Well Maintenance and Plugging Record for any well being modified or abandoned.

(b) If a well identification number does not exist at the time of modification or abandonment, the certified driller shall tag the well, as appropriate, and include the well identification number assigned on[~~in~~] the Uniform Kentucky Well Maintenance and Plugging Record.

(6) Variances. If conditions exist or are believed to exist that preclude compliance with the requirements of this administrative regulation, the certified [water supply] well driller may request a variance prior to well construction, modification, or abandonment. The variance request shall be submitted to the cabinet on the [form] Kentucky Water Well Variance Request form.

(a) The variance request shall include the following:

1. A thorough description of the land use at the site and adjacent properties[land];

2. Distance between the proposed well location and existing water supply wells and monitoring wells on adjacent properties;

3. The distance between the proposed well location and potential pollution sources, both on site and on adjacent properties, including septic systems, sewers, and petroleum and chemical storage tanks;

4. A description of the geologic conditions at the site, including soil thickness, type of bedrock, perched water, confining zones, and the depth to groundwater [water; and]

**5. A summary of the provisions, including the section numbers of this administrative regulation, for which the variance is requested;**

**6. A justification for the variance; and**

7. The proposed well construction procedures to be used in lieu of compliance with this administrative regulation **and an explanation as to how the alternate well construction procedures ensure the protection of the quality of the groundwater and the protection of** [that will ensure the protection of groundwater quality and] public health and safety.

(b) **Written variance procedure.** The driller shall request a variance and obtain cabinet approval before well construction begins.

**1. The driller shall submit the Kentucky Water Well Variance Request form, signed by the certified driller and well owner, and obtain written cabinet approval before well construction begins.**

**2. The cabinet shall notify the applicant in writing within ten (10) days of its decision to either grant or deny the variance.**

**3. The cabinet shall not issue a variance if the proposed water supply well construction will not ensure the protection of groundwater quality and public health and safety.**

**(c) Verbal variance for an emergency.**

**1. A driller may request a verbal variance for an emergency if the delay incurred due to the written variance procedure in paragraph (b) of this subsection may result in:**

- a. Loss of access to potable water for the intended user;**
- b. Failure to address an existing or impending environmental emergency in accordance with KRS 224.01-400; or**
- c. A risk to public health or safety.**

**2. The cabinet shall not issue a variance if the proposed water supply well construction will not ensure the protection of groundwater quality and public health and safety.**

**3. Within fifteen (15) days of the date the cabinet approves the verbal variance for an emergency, the water well driller shall submit to Kentucky Water Well Variance Request form, signed by the certified driller and well owner, to the cabinet.**

**(d) The variance approval shall list the conditions of the variance, including:**

- 1. The approved alternate well construction procedures;**
- 2. The well sampling requirements; and**
- 3. The requirement to notify surrounding property and well owners of the variance, if applicable.**

**(e) [The certified well driller may request a verbal approval for a variance, provided that the variance request shall be submitted to the cabinet on the Kentucky Water Well Variance Request within fifteen (15) days of the date of the verbal variance is approved.]**

**(c)1. The cabinet shall notify the applicant in writing within ten (10) days of its decision either to grant or deny the variance.**

**2. The cabinet shall issue the variance approval by letter.**

**3. The cabinet shall not issue a variance if the proposed water supply well construction will not ensure the protection of groundwater quality and public health and safety.**

**(d) The certified well driller shall submit a copy of the Kentucky Water Well Variance Request form, signed by the certified driller and the well owner, [variance letter of approval along with the Uniform Kentucky Well Construction Record] to the cabinet within sixty (60) days after the [a variance] well is [has been] completed.**

**(f)(e)1. After a variance is issued regarding the location of a well with respect to various pollution sources in Section 5(1) of this administrative regulation, the certified well driller for which a variance has been issued shall collect water samples from the well and have these samples analyzed for the parameters as specified in the Kentucky Water Well Variance Request approval letter.**

**2. The certified well driller shall submit a copy of the analytical results to the well owner and the cabinet within ten (10) days of the receipt of the analytical results from the laboratory.**

**Section 2. Construction Materials and Requirements. (1) All materials to be used for the construction, modification, or abandonment of water supply wells shall be approved for use in water wells by one (1) or more of the following:**

- (a) National Sanitation Foundation (NSF);**
- (b) American Society for Testing and Materials (ASTM); or**
- (c) American Petroleum Institute.**

**(2) Permanent well casing and liners.**

**(a) Well casing and liners shall be able to withstand the physical forces acting upon them during and following their installation and during their use. This includes forces due to suspension in the borehole, grouting, development, purging, pumping, sampling, and forces exerted on the well casing and liners by the surrounding geologic materials.**

**(b) Steel or PVC well casing and liners shall have a minimum inside diameter of four (4) inches, except for driven point wells and jetted wells which are addressed in Section 8(3) of this administrative regulation.**

**(c) The certified well driller shall install well casing and liners in accordance with manufacturer specifications.**

**(d) The certified well driller shall not install used, damaged, or**

**contaminated well casing or liner pipe.**

**(e) Steel well casing and liners.**

**1. Steel well casing and liners shall meet or exceed the minimum standards provided in Table A of this administrative regulation.**

**Table A: Casing and Liner Pipe Weights and Dimensions**

Size (inches)	External Diameter (inches)	Thickness (inches)	Weight (pounds per foot)
4	4.315	0.120	-
4 1/4	4.660	0.120	-
4 1/2	4.900	0.120	-
5	5.375	0.120	2.89
5 1/2	5.875	0.120	3.53
6	6.500	0.120	4.33
6 1/2	7.000	0.120	4.97
8	8.500	0.188	8.66
10	10.563	0.188	10.79
12	12.625	0.188	12.92
14	14.625	0.277	24.70
16	16.750	0.307	34.24
18	18.750	0.330	43.77
20	20.000	0.375	54.57
22	22.000	0.375	62.58
24	24.000	0.375	70.59
26	26.000	0.375	78.60

**2. Joints and couplings shall be welded or threaded.**

**3. Joints shall be watertight.**

**(f) PVC well casing and liners.**

**1. PVC well casing and liners shall:**

**a. Meet or exceed the minimum standards provided in Table B of this administrative regulation;**

**Table B: PVC Casing and Liner Pipe Specifications**

Size (inches)	SDR	External Diameter (inches)	Minimum Wall (inches)
4	26	4.500	0.173
5	26	5.563	0.214
6	26	6.625	0.255
8	26	8.625	0.332
10	26	10.750	0.413
12	26	12.750	0.490
14	26	14.000	0.539
16	26	16.000	0.616

**b. Have minimum Standard Dimension Ratio (SDR) 26;**

**c. Have a minimum Impact Classification of IC-1;**

**d. Meet or exceed American Society for Testing and Materials (ASTM) Specification D1784-07 or F480-066 found in American Society for Testing and Materials (A.S.T.M.) Specification D1784-07, Standard Specification for Rigid Poly (Vinyl Chloride) (PVC) Compounds and Chlorinated Poly(Vinyl Chloride) (CPVC) Compounds and American Society for Testing and Materials (A.S.T.M.) Specification F480-06b, Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in Standard Dimension Ratios (SDR), SCH 40 and SCH 80;**

**e. Meet or exceed the National Sanitation Foundation (NSF) Standard 14 for potable water applications found in National Sanitation Foundation (N.S.F.) Standard 14, Plastics Piping System Components and Related Materials; and**

**f. Meet or exceed the NSF Standard 61 found in National Sanitation Foundation (N.S.F.) Standard 61, Drinking Water System Components Health Effects.**

**2. Joints and couplings shall be welded, cemented, or threaded.**

**3. Joints shall be watertight.**

**4. PVC casing shall not be driven or pushed by force of the rig, either by direct hydraulic force or by hammer.**

**(3)(a) Temporary outer casing. Temporary outer casing used during well construction shall be sufficiently strong to permit installation without distorting or rupturing, and shall be removed upon well completion.**

**(b) If the driller determines that temporary outer casing is**

to be used as permanent outer casing, the temporary outer casing shall be grouted in place.

(4) Well screens.

(a)1. Well screens shall be capable of withstanding the stress to which the pipe will be subjected and the corrosiveness of the water with which it comes in contact.

2. Used, damaged, or contaminated well screens shall not be installed.

(b) Steel or PVC well screens with a minimum inside diameter of four (4) inches shall be installed, except for bored, driven, or jetted wells.

(c) Well screens shall be installed in accordance with the manufacturer's specifications.

(d) Wells screens shall be centered in the borehole.

(e) Steel screens. Joints and couplings shall be welded or threaded.

(f) PVC screens shall:

1. Have minimum Standard Dimension Ratio (SDR) 26;

2. Have a minimum Impact Classification of IC-1;

3. Meet or exceed ASTM Specification D1784-07 or F480-066 found in American Society for Testing and Materials (A.S.T.M.) Specification D1784-07, Standard Specification for Rigid Poly (Vinyl Chloride) (PVC) Compounds and Chlorinated Poly(Vinyl Chloride) (CPVC) Compounds and American Society for Testing and Materials (A.S.T.M.) Specification F480-06b, Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in Standard Dimension Ratios (SDR), SCH 40 and SCH 80;

4. Meet or exceed the NSF Standard 14 for potable water applications found in National Sanitation Foundation (N.S.F.) Standard 14, Plastics Piping System Components and Related Materials and rated potable water (PW) or well casing (WC); and

5. Joints and couplings shall be welded, cemented, or threaded.

(g) Screen slot size shall be selected to prevent the entry of sediment or other harmful material into the well.

(5) Air rotary drilling. Water shall be injected into the air stream at a rate sufficient to eliminate dust and to keep the borehole clean of cuttings.

(6) Mud rotary drilling method. Pits to contain or re-circulate drilling fluids shall be constructed in a manner **as** to isolate the drilling fluid from runoff to a stream or other waterway.

(7) Lead. Materials containing lead shall not be used in the construction of a water supply well.

Section 3. Sealing Materials. (1) Mixing. Sealing materials and additives that control or affect setting times or physical properties of the sealing materials shall be mixed in accordance with the manufacturer's specifications.

(2) Application. Grouting shall be performed using the grout-pipe method or a pressure grouting device to add the sealing materials and other materials used to seal the annulus from the bottom of the annulus upward in one (1) continuous operation until the annulus is filled **to two (2) feet below the surface** or to the point of pitless adapter attachment. If temporary or permanent outer casing is used, sealing materials may be added[~~to~~] prior to installing the inner casing.

(a) Cement and concrete grout. The appropriate type of neat cement and concrete grout for the conditions present in the well shall be used in accordance with the manufacturer's guidelines.

(b) Neat cement-bentonite grout. Neat cement-bentonite grout shall set for a minimum of seventy two (72) hours prior to resuming drilling operations.

(c)1. Bentonite grout. Bentonite grout shall set until the slurry has hydrated according to the manufacturer's specifications.

2. Bentonite grout shall not be used if chlorides in groundwater exceed 1,000 parts per million (ppm).

(d) Reduced setting time. Setting time may be reduced with additives if used in accordance with the manufacturer's specifications.

(e) Bentonite in pellet, chip, or granular form. If bentonite pellets, chips, or granules are placed above the water table, the certified driller shall comply with the following:

1. Dry bentonite pellets, chips, or granules shall be placed in increments **not greater than**[~~of a maximum of~~] two (2) feet in

thickness to provide proper hydration and prevent bridging;

2. Each increment shall be hydrated prior to the continued placement of dry bentonite pellets, chips, or granules; and

3. Bentonite pellets, chips, or granules shall not be used if chlorides in groundwater exceed 1,000 parts per million (ppm).

(f) Construction water. Water used in the drilling or decontamination process shall be potable.

(g)1. Drill cuttings. The certified well driller may use clay, shale, or limestone drill cuttings if cuttings are allowed to seal portions of the annulus.

2. Sandstone cuttings shall not be used.

Section 4. Design Factors. Each well shall be constructed to include the following: (1) Natural protection. The well shall be located to protect groundwater quality and public health and safety.

(2) Geologic formations.

(a) The well construction shall be adapted to the local or site-specific geologic formations and groundwater conditions.

(b) Undesirable groundwater shall be cased off or otherwise prevented from contributing to a well.

(3) Capacity. The well shall be constructed to optimize yield **while maintaining the safe functioning and integrity of the aquifer.**

(4) Pitless well adapters.

(a) A well casing shall not be cut off or cut into below finished ground surface except by a certified water supply well driller to install a pitless well adapter, a pitless well unit, or to make modifications.

(b) Construction or installation of pitless well adapters or pitless well units shall be done in such a manner **as** to provide a leak-proof seal. If a frost-free hydrant is installed, a Dual Check Valve Backflow Preventer that meets the specifications of American Society of Sanitary Engineering (A.S.S.E.) 1024 Performance Requirements for Dual Check Backflow Preventers shall be installed between the pitless adapter and the frost-free hydrant.

(5) Accessibility. The well shall be constructed to allow access for repairs, maintenance, treatment, and inspection.

Section 5. Setback requirements. (1) Wells shall be installed in accordance with the minimum lateral distances between the well and potential pollution sources in Table C of this administrative regulation.

Table C: Setback Requirements		
Lateral Sources of Contamination	Minimum	Distances
Leaching Pit	100 Feet	
Petroleum Storage Tank	100 Feet	
Grave or Cemetery	75 Feet	
Manure Pile, Animal Waste Storage, or Confined Animal Feeding Operation	75 Feet	
Wastewater Treatment Disposal System	75 Feet	
Side Wall of Lateral Trench, Bed, or Lagoon	70 Feet	
Geothermal – Closed Loop, Ungrouted	70 Feet	
Water Supply Well	50 Feet	
Septic Tank or Sewer Line	50 Feet	
Livestock Pen, Corral, or Stable	50 Feet	
Surface Water Body	25 Feet	
Geothermal – Closed Loop, Grouted; Abandoned Water Well Grouted	20 Feet	
Property Lines, Utility Lines, or Roadway Right of Way	10 Feet	

(2) The certified well driller shall evaluate land-use activities, both on the property on which the well is to be located and on adjacent properties, and identify other potential pollution sources not listed subsection (1) of this section.

(3) If the unconsolidated material is less than twenty (20) feet thick and composed of predominantly sand or gravel, the minimum lateral distances in subsection (1) of this section shall be doubled.

(4) Wells may be constructed in flood zones if an alternate site does not exist[exists].

(5) The certified well driller shall terminate the casing a minimum of two (2) feet above the maximum known flood elevation, or any known conditions of flooding by drainage or run-off from the surrounding land.

(6) Buildings. The well extended vertically shall clear a projection from a building by a minimum of five (5) feet.

(7) Pits and basements. Wells shall not be constructed in pits or basements.

Section 6. Wells Drilled into Consolidated Formations Using the Cable Tool, Air Rotary, Mud Rotary, Reverse Rotary, or Sonic Methods. (1) Borehole construction.

(a) The diameter of the borehole shall be a minimum of 1.75 inches greater than the outer diameter of the casing.

(b) Steel casing may be driven or advanced through unconsolidated material without over-drilling using the dry-driven grout method in accordance with Section 8(2) of this administrative regulation.

(c) The borehole diameter of the open-hole portion of the well shall be smaller than the inside diameter of the lowermost permanent casing in order that the permanent casing can rest on the shoulder of the open borehole[bore-hole] and in order that the lower portion of the permanent casing can be properly sealed.

(d) Plumbness and alignment. The borehole shall be sufficiently plumb and straight to receive well casing, liner, and screen without binding and shall not interfere with the installation and operation of the pump.

(2) Casing installation.

(a) Casing shall extend below the surface a minimum of twenty (20) feet.

(b) Single-cased wells.

1. Unconsolidated material thirty (30) feet thick or less. If unconsolidated material is thirty (30) feet thick or less, the certified well driller shall install casing extending a minimum of ten (10) feet into bedrock.

2. Unconsolidated material greater than thirty (30) feet thick. If unconsolidated material is greater than thirty (30) feet thick, the certified well driller shall install casing extending a minimum of two (2) feet into bedrock.

3. Fractures, crevices, voids, and undesirable geologic formations. Permanent casing shall be installed a minimum of two (2) feet below any fractures, crevices, voids, or undesirable geologic formations that may introduce harmful materials, pollutants, or undesirable groundwater to the well.

4. The certified driller shall case off undesirable water-bearing formations, leaving a minimum of two (2) feet below the bottom of the production zone.

(c) Multiple-cased wells.

1.a. Temporary outer casing. The inside diameter of temporary outer casing shall be a minimum of two (2) inches greater than the outside diameter of the inner casing.

b. Temporary outer casing shall be removed prior to well completion.

c. If the driller determines that temporary outer casing is to be used as permanent outer casing, the temporary outer casing shall be grouted in place.

2. Permanent outer casing. The inside diameter of permanent outer casing shall be a minimum of two (2) inches greater than the outside diameter of the inner casing.

3. Inner casing. The certified well driller shall install permanent inner casing in accordance with the requirements of subsection (2)(b) of this section.

(3) Screen and liner installation.

(a) If a screen or liner is installed, screen or liner slot size shall be selected to prevent the entry of fine-grained sediment and other anticipated harmful material into the well.

(b) Screens and liners shall conform to the requirements of Section 2 of this administrative regulation.

(4) Filter pack. If an artificial filter pack is installed, the filter pack shall meet the following criteria:

(a) Filter pack material size shall work in conjunction with the well screen to prevent the entry of fine material and sediment into

the well;

(b) Filter pack material shall be disinfected prior to placement in the well or shall be disinfected in the well;

(c) The filter pack shall extend a minimum of two (2) feet above the screen [and shall not extend to within twenty (20) feet of finished ground surface]; and

(d) Filter pack refill pipes may be installed if refill pipes terminate above finished ground surface, are provided with a watertight cap, and are sealed in the annulus.

(5) Annular seal.

(a) The certified well driller shall seal the annulus in a manner that prevents the migration of pollutants through the annulus. The certified well driller shall seal the annulus by one (1) of the following methods:

1. Sealing the entire annulus with sealing materials;

2. Sealing a minimum of the bottom two (2) feet of the annulus between the borehole[bore-hole] and the permanent casing and sealing the remainder of the annulus with impervious drill cuttings, sealing materials, native clay, or a combination of these materials;

or

3. The methods in subparagraphs 1 or 2 of this paragraph used in combination with a mechanical packer.

(b) Single-cased wells.

1. Open-hole construction. The certified well driller shall seal the bottom two (2) feet of the annulus with sealing materials and shall seal the remainder of the annulus with impervious drill cuttings, sealing materials, native clay, or a combination of these materials.

2. Screened construction. The certified well driller shall seal the bottom two (2) feet above the filter pack with sealing materials and shall seal the remainder of the annulus with impervious drill cuttings, sealing materials, native clay, or a combination of these materials.

(c) Multiple-cased wells.

1. Temporary outer casing.

a. The certified well driller shall seal the annulus below the temporary outer casing prior to removal of the temporary outer casing.

b. The certified well driller shall seal the remainder of the annulus in the zone where temporary outer casing was used upon removal of the temporary outer casing.

2. Permanent outer casing.[a.] The certified well driller shall seal the annulus between the borehole[bore-hole] and permanent outer casing at the installation of the permanent outer casing. The certified well driller shall seal the bottom two (2) feet of the annulus between the bore hole and the permanent outer casing with sealing materials and shall seal the remainder of the annulus with impervious drill cuttings, sealing materials, native clay, or a combination of these materials.

3.[b.] Inner casing. The certified well driller shall seal the entire annulus around the inner casing, including the annulus between the outer and inner casing. The certified well driller shall seal the bottom two (2) feet of the annulus between the outer casing and the inner casing with sealing materials and shall seal the remainder of the annulus with impervious drill cuttings, sealing materials, native clay, or a combination of these materials.

Section 7. Wells Drilled in Unconsolidated Formations. (1) Borehole construction.

(a) The borehole diameter shall be a minimum of four (4) inches greater than the outside diameter of the well casing and screen; or

(b) Steel casing may be driven or advanced without over-drilling using the dry-driven grout method in accordance with Section 8(2) of this administrative regulation.

(c) Plumbness and alignment. The borehole shall be sufficiently plumb and straight to receive well casing, liner, and screen without binding and shall not interfere with the installation and operation of the pump.

(2) Casing installation.

(a) Single-cased wells. A minimum of twenty (20) feet of permanent casing shall be installed below finished ground surface excluding the screened interval.

(b) Multiple-cased wells.

1. Temporary outer casing.

a. The inside diameter of temporary outer casing shall be a minimum of four (4) inches greater than the outside diameter of the inner casing.

b. Temporary outer casing shall be removed prior to well completion.

2. Permanent outer casing. The inside diameter of permanent outer casing shall be a minimum of four (4) inches greater than the outside diameter of the inner casing.

3. Inner casing. A minimum of twenty (20) feet of permanent inner casing shall be installed below finished ground surface excluding the screened interval.

(3) Screen installation. Screen slot size shall be selected to prevent the entry of fine sediment or other harmful material into the well.

(4) Filter pack. The natural formation may be developed to serve as a filter pack, or an artificial filter pack shall be installed. The artificial filter pack shall meet the following criteria:

(a) Filter pack material shall be sized to prevent the entry of fine sediment or other harmful material into the well;

(b) Filter pack material shall be disinfected prior to placement in the well, or disinfected in place;

(c) [1.] The filter pack shall extend a minimum of two (2) feet above the screen; and

[2. The filter pack shall not extend to within twenty (20) feet of finished ground surface; and]

(d) Filter pack refill pipes may be installed if they terminate above finished ground surface, are provided with a watertight cap, and are sealed in the annulus.

(5) Annular seal.

(a) The annulus shall be sealed in a manner that prevents the migration of groundwater and pollutants through the annulus. The certified well driller shall seal the annulus by one (1) of the following methods:

1. Sealing the entire annulus with sealing materials;

2. Sealing the two (2) feet of annulus directly above the filter pack with sealing materials and sealing the remainder of the annulus with drill cuttings, sealing materials, native clay, or a combination of these materials; or

3. Using the method outlined above in combination with a mechanical packer.

(b) Single-cased wells.

1. The certified well driller shall seal the annulus using one (1) of the following methods:

a. Sealing the entire annulus with sealing materials; or

b. Sealing the two (2) feet of annulus directly above the filter pack with sealing materials and sealing the remainder of the annulus with drill cuttings, sealing materials, native clay, or a combination of these materials.

2. The annular seal shall extend to a minimum depth of eighteen (18) feet below finished ground surface.

(c) Multiple-cased wells.

1. Temporary outer casing. The certified well driller shall seal the bottom two (2) feet of the annulus above the filter pack with sealing materials and the remainder of the annulus below the temporary outer casing with drill cuttings, sealing materials, native clay, or a combination of these materials prior to removal of the temporary outer casing.

2. Permanent outer casing. The certified well driller shall seal the bottom two (2) feet of the annulus between the borehole and permanent outer casing above the filter pack with sealing materials and the remainder of the annulus between the borehole and permanent outer casing with drill cuttings, sealing materials, native clay, or a combination of these materials at the installation of the permanent outer casing.

3. Inner casing. The certified well driller shall seal the bottom two (2) feet of the annulus between the inner casing and outer casing with sealing materials and the remainder of the annulus between the inner casing and outer casing shall be sealed with drill cuttings, sealing materials, native clay, or a combination of these materials.

Section 8. Special Well Types. Wells in this classification shall include bored, driven, and radial collector wells. [Bored wells shall

be constructed using the concrete-collar or the buried-slab method.]

(1) Bored well construction. **Bored wells shall be constructed using the concrete-collar or the buried-slab method.**

(a) Borehole diameter. The borehole diameter shall be a minimum of four (4) inches greater than the outside diameter of the well casing or precast concrete tiles used below the buried-slab or concrete-collar method.

(b) Casing materials. Casing materials for bored wells shall consist of pre-cast concrete tiles or corrugated fiberglass casing that meet the material construction standards set out in Section 2 of this administrative regulation.

(c) Filter pack. The natural formation may serve as a filter pack, or an artificial filter pack may be installed in the annulus below the buried slab. The filter pack shall meet the following criteria:

1. The artificial filter pack material shall be sized to prevent the entry of fine-grained sediment and other material into the well, and shall be free from clay, silt, or other deleterious material; [.]

2. Artificial filter pack material shall be disinfected prior to placement in the well; [.]

3. The filter pack shall not extend above the buried slab or concrete collar; and [.]

4. Filter pack refill pipes may be installed if they terminate above finished ground surface, are provided with a watertight cap, and are sealed in the annulus.

(d) Bored well construction using the buried-slab method.

1. The buried slab shall be a minimum of ten (10) feet below ground surface.

2. The slab shall consist of reinforced concrete constructed without joints.

3. The buried slab shall have a diameter sufficient to extend to the outer edge of the casing or tiles installed below the buried slab.

4. The top of the buried slab shall slope away from the center and shall provide a watertight joint where the buried slab rests on the well casing.

5. A coupling shall be cast in the buried slab in which to install the upper well casing.

6. The joint between the well casing and coupling shall be water tight.

7. Bentonite seal.

a. The certified well driller shall install a bentonite seal above the buried slab that extends the entire diameter of the borehole.

b. The bentonite seal shall be a minimum of twelve (12) inches thick.

8. Upper well casing.

a. The certified well driller shall install well casing above the buried slab to extend a minimum of eight (8) inches above the ground surface.

b. The inside diameter of the casing shall be a minimum of four (4) inches.

c. The upper casing shall conform to the requirements of Section 2 of this administrative regulation and shall have only threaded or welded joints.

9. Pitless adapter. If a pitless adapter is installed, installation of the pitless adapters shall be done in such a manner as to provide a leak-proof seal. If a frost-free hydrant is installed, a Dual Check Valve Backflow Preventer that meets the specifications of American Society of Sanitary Engineering (A.S.S.E.) 1024 Performance Requirements for Dual Check Backflow Preventers shall be installed between the pitless adapter and the frost-free hydrant.

10. The annulus fill for the upper casing above the bentonite seal shall consist of sealing materials or clean, inert earth materials.

11. The certified well driller shall install a water-tight well cap at the top of casing.

(e) Bored well construction with concrete-collar method.

1. The upper ten (10) feet of the borehole diameter shall be a minimum of six (6) inches greater than the outside diameter of the well casing.

2. The annular space in the upper ten (10) feet of the **borehole**[bore-hole] between the excavation and the installed concrete collar casing shall be sealed with concrete or sealing materials.

3. The diameter of the borehole below the grouting shall be a minimum of four (4) inches greater than the outside diameter of the

well casing.

4. The casing shall extend a minimum of eight (8) inches above the finished ground surface.

5. The cover slab shall be a minimum of four (4) inches thick.

6. A pipe sleeve shall be cast in place in the slab to accommodate the type of pump or pump piping to be used for the well.

7. A watertight joint shall be made where the slab rests on the well casing.

(2) Dry-driven grout method.

(a) General.

1. Steel casing may be driven using the dry-driven grout method.

2. PVC casing shall not be driven or pushed by force of the rig, either by direct hydraulic force or by hammer.

(b) Pilot hole. A pilot hole shall be constructed a minimum of three (3) feet deep and a minimum of six (6) inches larger in diameter than the outside diameter of the casing to be driven.

(c) Casing installation.

1. Dry bentonite granules not smaller than fifty (50) mesh and not larger than eight (8) mesh shall be poured into the pilot hole prior to driving the casing.

2. Bentonite shall continue to be poured into the pilot hole as the casing is driven and bentonite is drawn into the annulus.

(3) Driven point wells and jetted wells. Driven point wells and jetted wells shall be used for temporary dewatering purposes only.

(a) The well point, drive pipe, and joints shall be structurally suitable to prevent rupture or distortion during driving.

(b) Driven point wells and jetted wells shall not supply water for human consumption.

(c) Driven point wells shall have a water-tight cap.

(d) Driven point wells and jetted wells shall be abandoned in accordance with Section 11 of this administrative regulation.

(4) Radial collector wells.

(a) The certified well driller shall submit plans for a proposed radial collector well to the cabinet and receive written approval prior to construction of a radial collector well.

(b) Factors that shall be considered for approval of a radial collector well include:

1. Depth of the well;

2. Types of formations;

3. The location of the well;

4. Sources of potential contamination in the area surrounding the well;

5. Intended use of the well; and

6. Planned or approved treatment schemes, if applicable.

**Section 9. Well Finishing, Disinfection, and Testing.** (1) Upper terminal. Upon well completion, the certified driller shall comply with the following:

(a) The certified well driller shall terminate the casing a minimum of four (4) inches above finished ground surface and shall slope the ground surface away from the well.

(b) Flood zones. The certified well driller shall terminate the casing a minimum of two (2) feet above the maximum known flood elevation.

(2) Well development. **Newly installed water supply wells shall be developed until the column of water in the well is free of visible sediment.** ~~The certified well driller shall develop the well to remove all drill cuttings and to allow free entry of formation water.~~

(3) Disinfection. Wells shall be disinfected in accordance with the following procedures:

(a) Determine the feet of water in the well by subtracting the static water level from the total depth of the well;

(b) Determine the amount of chlorine disinfectant to use in order to provide a minimum chlorine concentration of 100 parts per million (ppm) in the well:

1. For a four (4) inch-diameter well, the certified well driller shall use a minimum of three (3) cups of chlorine bleach or two (2) ounces of hypochlorite granules per 150 feet of water in the well.

2. For a six (6) inch-diameter well, the certified well driller shall use a minimum of three (3) cups of chlorine bleach or two (2) ounces of hypochlorite granules per seventy-five (75) feet of water in the well.

3. For an eight (8) inch-diameter well, the certified well driller shall use a minimum of three (3) cups of chlorine bleach or two (2) ounces of hypochlorite granules per fifty (50) feet of water in the well.

4. For a twenty-four (24) inch-diameter well, the certified well driller shall use a minimum of eight (8) cups of chlorine bleach or five (5) ounces of hypochlorite granules per ten (10) feet of water in the well; **and**:-]

(c) Chlorine disinfection procedure.

1. Introduce the chlorine or hypochlorite granules into the well.:-]

2. Circulate the chlorine solution throughout the well for a minimum of thirty (30) minutes, ensuring that the chlorinated water contacts all parts of the well casing, borehole, discharge pipes, and all internal well components.:-]

3. Allow chlorinated water to stand in the well for a minimum of thirty (30) minutes.:-]

4. After the chlorinated water solution has stood in the well for a minimum of thirty (30) minutes, purge the well of all chlorinated water. Chlorinated water shall be discharged to the ground and shall not be discharged to a surface water body.

(4) Well cap.

(a) The certified well driller shall install a well cap or sanitary seal.

(b) The well cap shall be watertight.

(5) Vents. A vent shall consist of a pipe extending above the top of the well and above known flood elevations, with the open end turned down, and the open end shall be covered with twenty-four (24) mesh or finer screen of durable material. For wells with naturally occurring methane, a vent shall be installed.

(6) ~~Well label.~~ The certified well driller shall label the well with a Kentucky well label.

(7) Fecal coliform sampling.

(a) If the well is for potable use, the certified well driller shall have the well analyzed for fecal coliform bacteria within thirty (30) days of the completion of the well.

(b) The sample shall not be collected until all residual chlorine has been purged from the well.

(c) Samples for fecal coliform bacteria shall be delivered to the laboratory within six (6) hours of the time they are collected.

(d) Samples shall be kept at four (4) degrees centigrade (forty (40) degrees Fahrenheit); during that time samples shall not be frozen.

(e) Sample containers shall be sterile glass or plastic.

(f) Fecal coliform analysis shall be conducted at a laboratory certified in accordance with 401 KAR 8:040.

**Section 10. Well Modification.** (1) General. If a water supply well is modified, the certified driller shall bring the well construction into compliance with this administrative regulation.

(2) Well pits.

(a) A new well pit shall not be constructed, and a person shall not modify **an existing well pit** ~~existing well pits~~.

(b) The certified well driller modifying a well shall eliminate an existing well pit and shall extend the casing a minimum of four (4) inches above the finished ground surface.

(c) Flooring and the walls of the pit shall be broken and removed, and the pit shall be filled with compacted earth.

(3) Finishing and testing. The certified well driller shall finish the well and have the well tested for fecal coliform bacteria in accordance with Section **9(6)** ~~9(7)~~ of this administrative regulation.

(4) Reporting requirement. Within sixty (60) days of modification of a well, the certified well driller shall submit a Uniform Kentucky Well Maintenance and Plugging Record to the well owner and the cabinet in accordance with Section 1(3) and Section 1(4) of this administrative regulation.

**Section 11. Well Abandonment.** (1) Well unsuitable for its intended use. A water supply well **that** ~~which~~ has been damaged, or is otherwise unsuitable for use as a water supply well, shall be abandoned within thirty (30) days from the date it is determined that the well is no longer suitable for its intended use.

(a) Water supply wells shall be abandoned in such a manner as to prevent the migration of surface water or contaminants to the

subsurface and to prevent migration of contaminants among water bearing zones.

(b) A record of the abandonment of a water supply well shall be submitted by the certified driller on the Uniform Kentucky Well Maintenance and Plugging Record to the water well drillers program within sixty (60) days from the date abandoned.

(2) Well preparation for abandonment.

(a) Measurements. Prior to abandoning a water supply well, the certified driller shall:

1. Measure the well depth;

2. Measure the well diameter;

3. Measure the depth to static water level; and

4. Record the information in subparagraphs 1 through 3 of this paragraph on the Uniform Kentucky Well Maintenance and Plugging Record [measure the well depth and depth to static water level].

(b) Obstructions.

1. All obstructions shall be removed from the well prior to abandoning; or

2. If the pump or equipment is stuck in the well and cannot be removed, the certified driller shall push the material to the bottom of the well, as possible.

(c) Disinfection. The certified well driller shall disinfect the well in accordance with Section 9(3) of this administrative regulation.

(3) Drilled wells.

(a) Well casing, screen, and liner removal.

1.a. All well casing, screens, and liners shall be removed from the well prior to placing the sealing material by pulling or over-drilling.

b. Well casing, screens, and liners may be removed simultaneously with the introduction of sealing material if necessary to avoid borehole collapse.

2.a. If the well casing has been grouted in place and the driller is unable to remove the casing, the certified well driller may cut off the casing a minimum of five (5) feet below the ground surface.

b. The driller shall fill the well with sealing materials or inert earth materials from the bottom of the well to a minimum of twenty (20) feet below the ground surface.

c. The certified well driller shall fill the remainder of the well with sealing materials to a minimum of five (5) feet below the ground surface.

d. The uppermost five (5) feet of the well shall be filled with sealing materials or other inert earth material suitable to land use at the site.

(b) Sealing material placement.

1.a. The certified well driller shall fill [abandon] the well or borehole with sealing materials or other inert materials from the bottom to a minimum of twenty (20) feet below the ground surface.

b. Filling the well or borehole with sealing materials or inert material shall be done in a manner so that all voids are completely filled and in a manner that prevents bridging across the well or well bore.

2. The certified well driller shall fill the well or borehole with sealing materials from a minimum of twenty (20) feet below ground surface to a minimum of five (5) feet below the ground surface, in a manner that prevents the migration of pollutants along the well or well bore.

3. The certified well driller shall use sealing materials, clay, or other inert material suitable to the proposed land use to fill the upper five (5) feet or less of a well being abandoned.

(4) Wells with multiple casing. The certified well driller shall remove the innermost well casing, screen, or liner first and fill the well up to the level of the bottom of the next outer casing before removing the next outer casing.

(a) Voids. The certified well driller shall fill the well or borehole with sealing materials or other inert materials from the bottom of the well to a minimum of five (5) feet below the bottom of a void.

1. A packer, expansion bridge, or other support shall be placed at the top of the void.

2. A permanent bridge consisting of a minimum of ten (10) feet of sealing materials shall be placed above the expansion bridge.

(b) The certified well driller shall plug the remainder of the well or borehole with sealing materials or other inert materials from the

bottom to a minimum of twenty (20) feet below the ground surface. The certified well driller shall fill the well or borehole [bore-hole] with sealing materials from a maximum of twenty (20) feet below the ground surface to a minimum of five (5) feet below the ground surface.

(c) The certified well driller shall use sealing materials, clay, or other inert material suitable to the proposed land use to fill the upper five (5) feet or less of a well being abandoned.

(5) Bored and hand dug wells.

(a) The certified well driller shall fill the well with sealing materials, dense grade aggregate, limestone sand, or native clay from the bottom of the well to a maximum of five (5) feet below finished ground surface.

(b) The certified well driller shall remove the upper five (five) feet of well casing, tiles, or other well-wall material and fill the uppermost five (5) feet of the bore-hole with clay or an impermeable material appropriate to the intended use of the land.

(6) Driven wells.

(a) The certified well driller shall remove well casing and screens, and sealing materials shall be introduced simultaneously from the bottom of the well to a maximum of five (5) feet below finished ground surface.

(b) The certified well driller shall use sealing materials, clay, or other inert material suitable to the proposed land use to fill the upper five (5) feet or less of a well being abandoned.

(7) Flowing artesian wells.

(a) The certified well driller shall plug flowing artesian wells or wells in which there is upward movement of water between aquifers with neat cement grout that is pumped under pressure and mixed with the minimum quantity of water that will permit handling.

(b) The driller may restrict artesian flow if necessary. [The driller shall restrict flow by placing gravel or stone aggregate not more than one-third (1/3) of the diameter of the borehole through the water-bearing horizon, if its extent is known.]

(c) The certified well driller shall place a well packer, cast-iron plug, or temporary bridge at the bottom of the confining formation immediately overlying the artesian water-bearing horizon to seal off the flow.

(8) Reporting requirement. Within sixty (60) days after a water well has been abandoned, the certified well driller shall complete and submit a Uniform Kentucky Well Maintenance and Plugging Record to the well owner, if known, and to the cabinet.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Uniform Kentucky Well Construction Record", April 2008;

(b) "Water Well Owner's Guide", July [April] 2008;

(c) "Kentucky Water Well Variance Request", July [April] 2008;

(d) "Uniform Kentucky Well Maintenance and Plugging Record", April 2008;

(e) American Society for Testing and Materials (A.S.T.M.) Specification D1784-07, "Standard Specification for Rigid Poly (Vinyl Chloride) (PVC) Compounds and Chlorinated Poly (Vinyl Chloride) (CPVC) Compounds", November 2007;

(f) American Society for Testing and Materials (A.S.T.M.) Specification F480-06b, "Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in Standard Dimension Ratios (SDR), SCH 40 and SCH 80", August 2006;

(g) National Sanitation Foundation (N.S.F.) Standard 14, "Plastics Piping System Components and Related Materials", March 2007;

(h) National Sanitation Foundation (N.S.F.) Standard 61, "Drinking Water System Components Health Effects", May 2008 [July 2007]; and

(i) American Society of Sanitary Engineering (A.S.S.E.) 1024, "Performance Requirements for Dual Check Backflow Preventers", 2004.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) The material in subsection (1)(a) through (d) of this section may also be obtained from the Division of Water Web site, [www.water.ky.gov](http://www.water.ky.gov).

## VOLUME 35, NUMBER 3 – SEPTEMBER 1, 2008

[Definitions. The terms used in 401 KAR 6:320 and this administrative regulation shall have the meanings given in KRS 223.400, 224.005, or in this section:

(1) "Abandoned" means a well unsuitable for its intended use that has been sealed or plugged to prevent entry of surface water and to prevent mixing of water from different aquifers.

(2) "Annular space" means the opening between a well-bore or excavation and the well casing or between a casing pipe and a liner pipe.

(3) "Aquifer" means a water-bearing formation that transmits water in sufficient quantity to supply a well.

(4) "Bedrock" means any solid rock exposed at the surface of the earth or overlain by unconsolidated materials or soils.

(5) "Consolidated formation" means a geological formation which is bedrock.

(6) "Construction" means all acts necessary for obtaining ground water by wells, including drilling or excavation of the well and installation or modification of casing, but excluding the installation of permanent pumps and pumping equipment.

(7) "Driller" means water well driller as defined in KRS 223.400.

(8) "Established ground surface" means the elevation of the ground surface at the site of the well.

(9) "Finished ground surface" means the final or permanent elevation of the ground surface at the site of the well.

(10) "Impervious" means any material which will not permit the passage of water at a rate greater than 1 x 10<sup>-7</sup> centimeters per second (cm/sec) (e.g., clay).

(11) "Modification" means any change, replacement, or other alteration of the water well. This includes, but is not limited to deepening of a well, replacing or repairing a casing, replacing or repairing a well screen, installing a pitless adapter and any other changes of a well structure. Bailing and pump replacement are not modifications.

(12) "Monitoring well" means a well constructed when the actual or intended use in whole or part is the removal of water for the purpose of sampling, measuring or test pumping for scientific, engineering or regulatory purposes.

(13) "Pitless well adapter" means a device designed for attachment to one (1) or more openings through a well casing. It shall be constructed so as to prevent the entrance of contaminants into the well through the opening, protect the water supply lines and plumbing from freezing and provide access to water system parts within the well.

(14) "Pitless well unit" means an assembly which extends the upper end of the well casing to above the finished ground surface. It shall be constructed so as to prevent the entrance of contaminants into the well, conduct water from the well, protect the water lines from freezing, and shall provide full access to the well and to water system parts within the well.

(15) "Pumping water level" means the elevation of the water surface in a well when water is discharged during pumping.

(16) "Rig operator" means any individual under supervision of a driller for whom an application has been submitted and who has been given a rig operator card from the cabinet and who may from time to time be in charge of well construction in the driller's absence.

(17) "Rig operator card" means an identification card provided to a rig operator by the cabinet after a certified driller has submitted an application requesting a card for the rig operator.

(18) "Static water level" means the level at which water stands in a well when no water is being taken from the aquifer either by pumping or by free flow.

(19) "Unconsolidated formation" means a geological formation such as sand or gravel, which has a tendency to cave in under natural conditions.

(20) "Well unsuitable for its intended use" means a well:

(a) The use of which has been permanently discontinued;

(b) Which is in such a state of disrepair that it cannot be used to supply groundwater;

(c) Which presents a health hazard;

(d) From which groundwater for useful purposes is not obtainable; or

(e) Bore-holes which:

1. Are dry;

2. Have caved in; or

3. Are unsuitable for further development and well construction.

Section 2. Scope. This administrative regulation provides minimum standards for location, construction and modification of water wells. No water well shall be constructed or modified contrary to the provisions contained in this administrative regulation. Sections 3 through 12 of this administrative regulation apply to water wells except monitoring wells. Section 13 of this administrative regulation applies to monitoring wells. Wells used solely for the purpose of recovery of pollutants shall not be included in this administrative regulation.

Section 3. General Requirements. (1) Certified driller required. All water wells subject to this administrative regulation shall be constructed only by persons having a valid certificate issued in accordance with KRS 223.400 through 223.460 and 401 KAR 6:320, or by persons under the supervision of certificate holders and having a rig operator card.

(2) Reports. Within thirty (30) days after a water well has been constructed or modified, the driller shall submit a report of construction to the cabinet. The report shall be submitted on the form entitled Kentucky Water Well Record (DEP-4045).

(3) Variance:

(a) If conditions are believed to exist at a proposed installation site which preclude compliance with the requirements of this administrative regulation, the driller may request a variance by submitting to the cabinet a Kentucky Water Well Variance Request Form (DEP-6036) outlining a specific proposal to be used in lieu of compliance with this administrative regulation. The request shall include a thorough description of the site (lot size, the location of sewers, septic tanks, buildings, seepage fields, and other sources of contamination on the property and adjacent property with distances shown to the proposed well), the section number and brief summary of the provisions for which a variance is requested, and a complete justification as to why the variance is needed and how the alternate standard ensures the protection of the quality of the groundwater and the protection of public health and safety. The driller shall give special emphasis to ensuring the protection of the public's health and safety. The driller shall provide a description of site-specific geologic and soil conditions. The cabinet shall notify the applicant in writing within thirty (30) days of its decision either to grant or deny the variance based upon a determination by the cabinet that the proposed variance shall ensure the protection of the quality of the groundwater and protection of the public health and safety. The driller shall request a variance and shall obtain approval before well construction begins. In case of an emergency, where the delay incurred due to the above-described variance procedure would cause undue hardship or loss of life to the intended user, the driller may obtain an oral variance, provided the above-listed information is provided to the cabinet within fifteen (15) days of the date such oral variance is issued.

(b) After any variance is issued regarding the location of a well with respect to various contamination sources in Section 6 of this administrative regulation, the driller for which a variance has been issued shall take two (2) water samples from the well and have them analyzed for fecal coliform at a cabinet-approved laboratory. The cabinet may require analysis for other water quality parameters which may exist in conjunction with the source of potential pollution as necessary to protect the health or safety of potential users. At the time the variance is approved, the cabinet shall notify the driller as to what these parameters will be. One (1) sample shall be taken within thirty (30) days and the second sample shall be taken within sixty (60) days, but not less than thirty (30) days, after completion of the well.

(c) Examples of location problems which could preclude compliance with this administrative regulation would be where the proposed location of a well is too close to septic tanks, buildings, sewer lines, or barnyards as indicated in Table A.

(d) Examples of public health and engineering principles that may be considered in issuing a variance are ground surface conditions, depth of the water table, the location of sources of pollutants, the vulnerability of the aquifer to bacteria and other pollutants, and the geologic conditions at the site.



(4) Water sampling. All water samples shall be delivered to the laboratory within six (6) hours of the time they are taken and shall be kept at four (4) degrees centigrade (or forty (40) degrees Fahrenheit) during that time, but shall not be frozen. Containers for the water samples shall be sterile glass or plastic. However, drillers may obtain approval from the cabinet to perform fecal coliform analyses (except those required for variance approval) if they can demonstrate to the cabinet that they are capable of providing an accurate analysis.

(5) Display of certificate number. Drillers shall have their certificate numbers permanently affixed and prominently displayed on all drilling equipment used at construction sites. The certificate number shall be inscribed in the following manner: KY.CERT. XXXX-XXXX (insert certificate number in place of the X's). Numbers shall be at least three (3) inches in height and of a color that is easily distinguishable from that of the equipment. This number shall be removed if equipment is scrapped, sold, or otherwise changes ownership or if the driller's certificate becomes invalid.

(6) The documents listed in paragraphs (a) and (b) of this subsection are adopted and filed herein by reference. Copies of these documents may be obtained from the Environmental and Public Protection Cabinet, Division of Water, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410. The material is available for public inspection and copying during business hours of 8 a.m. to 4:30 p.m. at the Division of Water, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.

(a) Kentucky Water Well Record (DEP-4045) (September 15, 1987); and

(b) Kentucky Water Well Variance Request Form (DEP-6036) (January 1, 1991).

Section 4. Design Factors. The driller shall design each well to include the following:

(1) Natural protection. Location of the well shall include use of every natural protection available to promote sanitary conditions.

(2) Geological formations. The well construction shall be adapted to the local or site-specific geologic formations and ground water conditions.

(3) Undesirable geological formations. Water bearing formations shall be prevented from contributing to a well by installing casing or a liner and properly sealing when such formations contain undesirable water or when the primary purpose for the well is to withdraw water from a deeper formation.

(4) Capacity. The well shall be constructed with the capacity to produce as much quantity of the desired water as the aquifer or aquifers can safely furnish.

(5) Durability. Construction methods and materials shall provide a durable well capable of maintaining safe water and protecting the aquifer over its useful lifetime and until the well is properly abandoned.

(6) Pitless well adapters. No well casing shall be cut off or cut into below ground surface except by a driller to install a pitless well adapter or pitless well unit. The well casing shall extend at least four (4) inches above established ground surface. If practicable, the well casing shall extend above any known conditions of flooding or run-off from the surrounding land after installation of a pitless well adapter or pitless well unit. Construction or installation of pitless well adapters or pitless well units shall be done in such a manner to provide a leak-proof seal.

Section 5. Location. (1) General. In establishing the location of a well, the driller shall consider sources of pollutants which exist on or adjacent to the premises where the well is to be located. As far as possible, the well shall be located on ground which is higher than sources of pollutants and shall have ready access for repairs, maintenance, treatment and inspection.

(2) Relation to sources of pollutants. In establishing minimum lateral distances to locate a well from potential sources of pollutants, the driller shall consider the character and location of the sources of pollutants, types of geologic formations present, depth to the aquifer, direction of ground water flow, effect on the ground water movement by well pumping and possibilities of flooding of the site by surface waters. Sources of pollutants such as streams, refuse disposal sites, excavations, waste treatment facilities, buried oil and gasoline storage tanks, improperly constructed wells and cisterns shall be evaluated and a distance determined based on

the pertinent facts:

(a) The minimum lateral distances shown in Table A shall apply for the sources of pollutants listed.

(b) When the upper formations are composed of materials with a permeability of 1 x 10<sup>-3</sup> centimeters per second or greater, the lateral distances in Table A shall be doubled.

(3) Flood water. The construction of wells in locations subject to flooding shall be avoided. If no reasonable alternate site exists, wells may be constructed in flood zones only if water-tight construction is provided. If practicable, the casing of the well shall terminate not less than two (2) feet above the maximum known flood elevation.

(4) Relation to building. With respect to buildings, pits, and basements, the location of a well shall be as follows:

(a) Adjacent to building. When a well must be located adjacent to a building, it shall be so located that the center line of the well extended vertically will clear any projection from the building by not less than five (5) feet.

(b) Pits and basements. New wells shall not be constructed in pits or basements.

Section 6. Drilled Wells in Unconsolidated Formations. (1) General. In wells constructed in unconsolidated formations which extend the full depth of the well, including the screened area, the driller shall install a permanent casing, governed by the pumping level in the finished well. For pumping levels greater than twenty (20) feet below the ground surface, the driller shall install casing that extends five (5) feet below the pumping level. For pumping levels twenty (20) feet or less below the ground surface, the driller shall install casing that extends ten (10) feet below the pumping level. Under no conditions shall a driller install less than twenty (20) feet of permanent casing, excluding the screened interval. The driller shall fill the annular space between the casing and the drill hole. This may be accomplished by constructing an upper drill hole having a diameter four (4) inches greater than the inner diameter of the casing to be installed and extending to a depth of at least twenty (20) feet. The driller shall seal the upper drill hole with impervious drill cuttings, native clay, bentonite, or a neat cement-bentonite slurry after the casing is in place. Cable-tool drilling may accomplish proper seal through dry bentonite application while driving casing.

(2) Gravel pack construction. When an oversized drill hole (i.e., more than four (4) inches greater than the inside diameter of the casing) is constructed to permit the placement of a gravel pack around the well screen, the driller shall seal the annular space between the casing and drill hole in the top twenty (20) feet or twenty (20) feet below the point of pitless adapter attachment with impervious drill cuttings, native clay, a neat cement-bentonite slurry or bentonite. If a permanent outer casing is installed, the driller shall extend the outer casing to a depth of at least twenty (20) feet and, depending on the formations present, seal the annular space between the drill hole and the outer casing with impervious drill cuttings, native clay, bentonite, or a neat cement-bentonite slurry. The driller shall seal the annular space between inner and outer casings to prevent the entrance of pollutants from the surface.

(a) All gravel placed in the well shall be clean, washed and disinfected prior to placement or provisions made for disinfection in place.

(b) Gravel refill pipes may be installed if they terminate above established ground surface and are provided with watertight caps.

(c) In wells designed for placement of an artificial gravel pack, the driller shall provide an adequate screen having openings sized on the basis of the grain size of the gravel. The driller shall develop the well to ensure free entry of water without sediment.

(d) Under no circumstances shall the gravel pack extend to any closer than twenty (20) feet of the established ground surface.

Section 7. Drilled Well Construction in Consolidated Formations. (1) Where the soil overburden is thirty (30) feet or less in thickness, the driller shall drive or otherwise provide a watertight seal to a depth of at least twenty (20) feet below ground level and at least ten (10) feet into bedrock. The diameter of the drill hole shall be a minimum of one and three-quarter (1 3/4) inches greater than the inner diameter of the casing. The driller shall fill the annular space with a neat cement-bentonite slurry, bentonite, native clay, impervious drill cuttings, or a mechanical packer in combina-

tion with one (1) or more of the above materials. The driller shall install plastic casing as required in subsection (7) of this section.

(2) Where the soil overburden is greater than thirty (30) feet in thickness, the driller shall install the casing to a watertight seal, a minimum of two (2) feet into stable rock. When the casing is driven, the driller shall fit the casing with a drive shoe and drive the casing to a watertight seal. The driller shall seal the annular space around the casing with impervious drill cuttings, native clay, bentonite, a neat cement-bentonite slurry or a mechanical packer in combination with one (1) or more of the above materials. The driller shall install plastic casing as required in subsection (7) of this section.

(3) Where the well is drilled to obtain water from the bedrock, beneath a thick (greater than thirty (30) feet) overburden of soil or unconsolidated formations which are unstable and will settle back around the casing, the driller shall drive the well casing to a watertight seal. In instances where a temporary surface casing must be installed to stabilize the bore-hole and in order to facilitate drilling and permanent casing installation, the driller shall fill the annular space around the well casing with impervious drill cuttings, bentonite, a neat cement-bentonite slurry or native clay to a depth of at least twenty (20) feet. The driller shall not install plastic casing under these conditions.

(4) Where the well is drilled to obtain water from a lower formation the driller shall extend the casing at least two (2) feet below any creviced formation or fractured formation encountered and drive or install the casing watertight into stable bedrock. The diameter of the drill hole through the creviced formation shall be a minimum of one and three-quarter (1 3/4) inches greater than the inner diameter of the casing. The driller shall seal the annular space with a neat cement-bentonite slurry, bentonite, native clay, impervious drill cuttings, or a mechanical packer in combination with one (1) or more of the above materials. Where an outer casing is left in place, the driller shall seal the annular space between the casings with impervious drill cuttings, native clay, bentonite, a neat cement-bentonite slurry, or a mechanical packer in combination with one (1) or more of the above materials. In instances where voids are encountered, the driller shall extend the casing a minimum of two (2) feet into stable rock below the lowermost void and shall seal the annular space with impervious drill cuttings, bentonite, a neat cement-bentonite slurry, clay or a mechanical packer in combination with one (1) or more of the above materials.

(5) Flowing artesian well. All flowing artesian wells shall be shut in. The driller shall install casing to eliminate flow in the annular space and shall seal the annular space between drill hole and casing with a neat cement-bentonite slurry, bentonite, native clay, impervious drill cuttings, or a mechanical packer in combination with one (1) or more of the above materials.

(6) In all wells where the casing is driven, the driller shall not use plastic casing.

(7) Plastic casing installations. When plastic well casing is installed, the drill hole shall be a minimum of two (2) inches greater than the inner diameter of the casing. The driller shall clean the pipe spigot and socket and treat it with a cleaner-primer. The driller shall solvent cement the joints with a quick-setting cement, or thread and couple the joints. Other types of joints may be evaluated and approved by the cabinet. The driller shall cement a coupling on the bottom of the casing to stabilize it in the hole or use centralizers. The driller may use a steel nipple five (5) to ten (10) feet long on the bottom of the casing in lieu of the coupling when the well will be continued by drilling out through the bottom of the casing. In wells completed in consolidated formations, the driller shall set the casing into bedrock a minimum of ten (10) feet where the overburden is thirty (30) feet or less in thickness and a minimum of two (2) feet where the overburden is greater than thirty (30) feet in thickness to prevent leaking around the end of the casing. In wells in bedrock where the well will be drilled to total depth before casing is installed, the driller shall install a watertight mechanical packer at the bottom of the lowermost string of casing. The driller shall seal the annular space between the casing and wall of the drill hole with at least five (5) feet of bentonite immediately above the packer. The driller shall fill the annular space above the bentonite seal with impervious drill cuttings, native clay, bentonite, or a neat cement-bentonite slurry.

(8) In areas where the overburden is at least fifteen (15) feet

thick and water can only be obtained at or just above the rock surface, the driller shall set the casing at or just above the rock. Under these conditions, the driller shall seal the lowermost part of the annular space between the casing and wall of the drill hole with a minimum of two (2) feet of bentonite. The driller shall fill the remaining annular space above the bottom seal to the surface with a neat cement-bentonite slurry, bentonite or impervious clay. There shall be no less than twelve (12) feet of overburden from the ground surface to the bottom of the seal. If the casing is to be slotted or a screen installed, the driller shall not extend the slotted section above the bottom of the bentonite or cement seal. If water is encountered in drilling into the rock to develop a reservoir, the driller shall choose which water source is to be used and seal off all others.

Section 8. Special Type Wells. (1) General. Wells in this classification are dug, bored, driven, and radial collector. The choice of any one (1) of these as opposed to a drilled well is largely dictated by the characteristics of the water-bearing formations or aquifers in the local areas.

(2) Bored or dug well — well not finished with buried slab. Bored or dug wells that are not finished as buried slab wells shall comply with the following:

(a) Annular space. The driller shall grout the open space between the excavation and the installed casing with concrete. The driller shall pour the concrete a minimum of six (6) inches thick and without construction joints from the ground surface to a minimum of ten (10) feet below ground level. The driller shall be responsible for the installation of the concrete grout. The driller shall insure that the diameter of the well bore below the grouting is a minimum of four (4) inches greater than the outside diameter of the well casing and is filled with a gravel pack from the well bottom to the water-producing formation and with impervious material from the top of the gravel pack to the bottom of the concrete grout. The driller shall not extend the gravel pack any closer than ten (10) feet of the ground surface.

(b) Upper terminal. The driller shall extend the casing at least eight (8) inches above finished ground surface. The driller shall provide a cover slab at least four (4) inches thick, adequately reinforced and having a diameter sufficient to extend to the outer edge of the casing. The slab shall be constructed without joints. The driller shall slope the top of the slab to drain to all sides and shall provide a watertight joint where the slab rests on the well casing. If a manhole is installed, the driller shall insure that the manhole consists of a curb cast in the slab extending four (4) inches above the slab. The driller shall provide a watertight cover having sides which overhang the curb at least two (2) inches for any manhole.

1. If installing a vent, the driller shall provide a vent that consists of pipe extending above the slab with the open end turned down and not less than six (6) inches above the slab. The driller shall cover the open end with twenty-four (24) mesh or finer screen of durable material.

2. The driller shall cast in place adequate sized pipe sleeve or sleeves in the slab to accommodate the type of pump or pump piping proposed for the well.

(3) Bored or dug well — buried slab construction. The driller shall terminate the well casing at a depth of ten (10) feet or more below the ground surface. The driller shall use well casing meeting the requirements in Section 9 of this administrative regulation. The driller shall firmly imbed or connect the casing to a pipe cast in a reinforced buried concrete slab. The casing shall be a minimum of four (4) inches in diameter and extend from the concrete slab to at least eight (8) inches above finished ground surface. The driller shall fill the annular space between the casing pipe and the well bore with clean impervious material thoroughly tamped to minimize settling. The driller shall make the diameter of the well bore below the buried slab a minimum of four (4) inches greater than the outer diameter of the well casing. The driller shall fill the well bore with a gravel pack from the well bottom to the water table and with impervious material from the top of the gravel pack to the bottom of the concrete slab. The driller shall not extend the gravel pack any closer than ten (10) feet of the ground surface.

(4) Driven well. The well point, drive pipe and joints shall be structurally suitable to prevent rupture or distortion during the driving of the well. The driller shall construct the top ten (10) feet of the

hole to a diameter of at least two (2) inches greater than the inner diameter of the drive pipe. The driller shall fill the annular space around the drive pipe with impervious material. The type of pump proposed for the well will determine how the top ten (10) feet or more of the well shall be completed. If the working barrel of a hand pump is to be located below ground surface, the driller shall enclose the upper portion of the well in steel or iron casing pipe to a point below the barrel. So-called "frost pits" curbed with stone, brick, tile, or other materials shall not be installed.

(5) Radial collector well. Approval of plans for the well shall be obtained from the cabinet before construction. Factors that shall be considered for approval of a radial collector well include depth of well, types of soil formations, location of well and sources of potential contamination in the surrounding area.

Section 9. Construction Materials and Other Requirements. (1) Casing and liner pipe. In selection of casing and liner pipe, the driller shall consider the stress to which the pipe will be subjected during construction and the corrosiveness of the water with which it comes in contact. The driller shall install steel or plastic casing, except for bored or dug wells, which the driller shall construct in accordance with Section 8 of this administrative regulation and except for monitoring wells, which the driller shall construct in accordance with Section 13 of this administrative regulation. The driller shall install all pipe and casing in accordance with manufacturer's specifications. The driller shall not install used or rejected casing or pipe shall not be used.

(a) The driller shall install steel well casing that conforms to the minimum standards given in Table B; or

(b) The driller shall install plastic well casing and liners that meet the requirements given in Table C. Evidence of compliance shall be display of the National Sanitation Foundation seal on each section of casing.

(c) The driller shall install plastic well casing and liners that are Standard Dimension Ratio (SDR) rated, have an minimum impact classification of IC-1, and conform to the minimum requirements given in Table C.

(2) Outer casing. The driller shall install casing, intended for construction purposes only, that is of weight and design as necessary to be watertight and permit installation without distortion or rupture to the specified depth. The driller shall remove the outer casing upon completion of the well.

(3) Joints. The driller shall insure that all casing and liner pipe joints are watertight.

(4) Screens or perforated or slotted casing. The driller shall install screen or perforated or slotted casing openings that provide the maximum amount of open area consistent with strength of screen or casing and the grading of the water-bearing formation or gravel pack. The driller shall install materials with openings that permit maximum transmitting ability without clogging or jamming and are sized to provide sediment-free water to the well. Screens shall be made of noncorrosive material.

(5) Drive shoe. The driller shall equip the pipe that is to be driven with a drive shoe. The driller may use a collar or coupling for light driving. No driller shall drive plastic casing.

(6) Grouting guides. The driller shall provide a centering shoe for protective casing that is to be grouted in the drill hole or annular space. The driller shall provide sufficient guides or centralizers to permit the unobstructed flow and deposition of the thickness of grout specified.

(7) Cement grout. The driller shall use the procedures and materials for preparing and placing cement grout that follow:

(a) Concrete grout. The driller shall mix cement, sand, and water in the proportion of one (1) bag of cement (ninety-four (94) pounds) and an equal volume of dry sand to not more than six (6) gallons of clean water.

(b) Neat cement grout. The driller shall mix one (1) bag of cement (ninety-four (94) pounds) to not more than six (6) gallons of clean water.

(c) Neat cement-bentonite slurry. The driller shall mix one (1) bag of cement, (ninety-four (94) pounds) to seven and one-half (7 1/2) gallons of clean water and two (2) to six (6) percent bentonite (by weight two (2) to six (6) pounds) to increase fluidity and to control shrinkage.

(d) Application. The driller shall perform all cement grouting by

adding the mixture from the bottom of the annular space upward in one (1) continuous operation until the annular space is filled or to the point of pitless adapter attachment. The driller may add bentonite, aquajel, or similar materials to the annular space in the manner indicated for grouting, prior to the cement grouting, to seal any small crevices or fissures and assure that the annular space is open.

(e) Setting time. The driller shall not resume drilling operations until the cement grout has set and hardened for at least forty-eight (48) hours when high-early-strength cement is used and at least seventy-two (72) hours when regular cement is used. The driller may reduce setting time from forty-eight (48) hours with high-early-strength cement and seventy-two (72) hours with regular cement by addition of manufacturers' approved chemicals and following manufacturers' recommendations for setting time.

(8) Plumbness and alignment. The driller shall ensure that the bore of the hole is sufficiently plumb and straight to receive the casing without binding. The driller shall ensure that the casing is sufficiently plumb and straight that it will not interfere with installation and operation of the pump.

(9) Construction water. The driller shall obtain water used in the drilling process from a source which will not result in the introduction of pollutants into the well.

(10) For air rotary drilling, the driller shall inject water into the air stream at the rate of approximately three (3) gallons per minute.

(11) Drill cuttings. The driller shall use drill cuttings that are impervious to fill the annular space of a well to prevent surface water from percolating down the drill hole.

(12) The driller shall not use any material containing lead in constructing a water well.

Section 10. Finishing and Testing. (1) Upper terminal. The driller shall terminate the casing or riser pipe at a height above established ground surface consistent with proposed plans for a pump house and pump installation, but not less than four (4) inches above finished ground surface. If practicable, the driller shall not install casing less than two (2) feet above any known conditions of flooding by drainage or run-off from the surrounding land. The driller shall fit the well with a well cap or sanitary seal upon completion of the well and prior to departure from the well site. The driller shall compact and grade the ground surface surrounding the well to drain water away from the well.

(2) Disinfection. For all wells except monitoring wells, the well driller shall disinfect all wells upon completion of the driller's work. The driller shall introduce sufficient chlorine to give a concentration of at least 100 parts per million to the water in the well. (CAUTION: When working with chlorine, persons should be in ventilated place. The powder or strong liquid should not come in contact with skin or clothing. Solutions are best handled in wood, plastic or crockery containers because metals are corroded by strong chlorine solutions.)

(a) Drilled wells. The driller shall disinfect the well in accordance with the following:

1. Determine the amount of water in the well by multiplying the gallons per foot (from Table D) by the number of feet of water in the well.

2. For each 100 gallons of water in the well, use the amount of chlorine liquid or compound given in Table D. Mix this total amount in about ten (10) gallons of water. If dry granules or tablets are used, they may be added directly to drilled wells.

3. The total amount of this solution shall be poured into the top of the well before the seal is installed and splashed around the lining, or wall, of the well. Ensure that the solution has contacted all parts of the well.

4. Where the driller installs a pump, the driller shall connect one (1) or more hoses from faucets on the discharge side of the pressure tank to the top of the well casing and start the pump, recirculating the water back into the well for at least fifteen (15) minutes. Then open each faucet in the system until a chlorine smell is evident. Close all faucets. Seal the top of the well.

5. Let stand for several hours, preferably overnight.

6. After standing, operate the pump, discharging water from all outlets until all chlorine odor disappears. Faucets on fixtures discharging to septic tank systems shall be throttled to a low flow to avoid overloading the disposal system.

7. Where no pump is installed, the well shall be bailed until all chlorine odor disappears before sampling.

(b) Dug wells. The driller shall disinfect the well in accordance with the following:

Diameter of well (in feet)	3	4	5	6	7	8	10
Amount of 5.25% laundry bleach to use per foot of water (in cups)	1.5	3	4.5	6	9	12	18
Amount of 70% Hypochlorite granules to use per foot of water (in ounces)	1	2	3	4	6	8	12

1. The amount of disinfectant required is determined primarily by the amount of water in the well. Using Table E, calculate the amount of chlorine that must be added for each foot of water in the well, according to its diameter.

2. To determine the exact amount of bleach to use, multiply the amount of disinfectant indicated as determined by the well's diameter times the number of feet of water.

3. This total amount of bleach shall be added to approximately ten (10) gallons of water, and splashed around the lining, or wall of the well. Be certain that the solution has contacted all parts of the well, using the entire amount of disinfectant. Seal the top of the well.

4. When this is done, pump enough water so the strong chlorine odor is evident. When the odor is detected, stop the pumping and allow the solution to remain in the well overnight.

5. After standing, operate the pump, discharging water from all outlets until a colormetric test indicates the absence of chlorine. Faucets on fixtures discharging to septic tank systems shall be throttled to a low flow to avoid overloading the disposal system.

(c) Water samples. Upon completion and disinfection of a new well or modification of an existing well, the driller shall be responsible for having the well tested for fecal coliform if the well is for potable use. The driller shall also give the owner information prepared by the cabinet explaining the importance of water well sampling, procedures for sampling, and how the water can be tested to assure a safe supply of water. The water sample shall not be taken until all chlorine has been removed from the well.

Section 11. Modification of Wells. (1) General. Wells constructed prior to the effective date of this administrative regulation need not meet its provisions. However, when a well is modified, reconstructed, or repaired, the work shall include those changes necessary to make the well conform to this administrative regulation.

(2) Well pits.

(a) No new well pits shall be allowed.

(b) No person shall modify existing well pits. Any person modifying a well shall eliminate existing well pits. The driller shall extend the casing a minimum of four (4) inches above the finished ground surface. Any flooring and the walls of the pit shall be broken and removed and the pit shall be filled with compacted earth.

(3) Notification. Within thirty (30) days after modification of a well, the driller shall provide written notification of the modification to the cabinet. The notification shall be submitted on the form entitled Kentucky Water Well Record (DEP-4045), incorporated in Section 3(6) of this administrative regulation.

Section 12. Abandoned Wells. (1) General. If a constructed water well is not suitable for its intended purpose and is to be abandoned, or if a well is drilled too close to a previously constructed well the owner shall ensure that the abandonment procedures are implemented as soon as possible, but no later than thirty (30) calendar days after completion of the well or after the owner has made the decision that the uncompleted well or previously constructed well is not to be used. The driller shall ensure that the well is completely filled in such a manner that the vertical movement of water within the annular space is effectively and permanently prevented.

(a) Preparation for wells to be abandoned. Before a well which is to be abandoned is sealed, the driller shall measure the depth and check to ensure that there are no obstructions within the well

which may interfere with plugging operations. The driller shall pull or drill out screens, casings and liner pipes whenever possible to assure placement of an effective seal. The driller shall remove at least the upper five (5) feet of casing, liner pipe, brick, stone, metal, or other materials in all wells to prevent the passage of water along the casing and entering the water-bearing strata. The driller shall pull rather than cut the top joint of all plastic or steel casing.

(b) Disinfection. The driller shall disinfect the well and fill materials by using sodium hypochlorite or calcium hypochlorite. The driller shall dissolve sufficient chlorine compound to produce a calculated concentration of at least 100 parts per million (100 ppm) available chlorine in double the volume of water in the well. The driller shall place the fill material in the well after the water in the well has been so treated. Cement grouts do not require disinfection.

(c) Fill materials. The driller shall fill the aquifer or water-bearing zones in the wells with clean (relatively free of organic matter), disinfected, and dimensionally stable materials. The driller shall mechanically pack the fill materials to avoid later settlement. Neat cement shall not require disinfection. Except as specified in paragraph (e) of this subsection and subsections (2) through (5) of this section, the driller shall use only neat cement grout, a neat cement-bentonite slurry, or bentonite in plugging water wells. In all cases, clay may be used to fill the uppermost five (5) feet of the bore-hole.

(d) Placement of grout. The driller shall introduce neat cement or neat cement-bentonite grout used as a sealing material in abandonment operations at the bottom of the well or interval to be sealed (or filled) and shall place it progressively upward to the top of the well. For all such sealing materials the driller shall use grout pipe, tremie, cement bucket or dump bailer, in such a way as to avoid segregation or dilution of the sealing materials. Dumping grout material from the top shall not be permitted.

(e) Permanent bridges. Permanent bridges may be used only where voids are encountered which are too large to be filled. Under these circumstances, the driller shall completely fill the well to the bottom of the void with impermeable material. The driller shall construct a permanent bridge immediately above the void. The permanent bridge shall be at least ten (10) feet thick. Permanent bridges shall be composed only of neat cement. The driller shall allow the cement to harden for at least twenty-four (24) hours, if Type I cement is used, or for at least twelve (12) hours if Type III (high early strength) cement is used, before backfilling is continued. Temporary bridges used to provide a base for the permanent bridge shall consist only of inorganic materials - except that patented devices containing expandable neoprene, plastic, and other elastomers, and specifically designed for use in well construction are acceptable. Notification shall be given to the cabinet at least twenty-four (24) hours before a permanent bridge is to be installed.

(f) Preexisting contamination. A well unsuitable for its intended use which has been affected by salt water intrusion or any other pollutant shall be considered a special case. The method of filling and sealing such wells shall be submitted to the cabinet by the drillers and shall be subject to individual review and written approval by the cabinet prior to sealing. In the sealing of a double or multiple cased well, the driller shall submit a drawing of the well with a description of the proposed procedure and materials to be used, for prior approval by the cabinet.

(g) Well abandonment records. Before equipment is removed from the site, the exact location of the well or drill hole to be sealed and abandoned shall be determined and recorded, tying in the location with permanent reference points. The driller shall record all information relative to the abandonment procedures and the location of the abandoned well on forms provided by the cabinet with copies supplied to the cabinet and the owner of the land within thirty (30) days. The information shall be submitted on the form entitled Kentucky Water Well Record (DEP-4045) incorporated by reference in Section 6(3) of this administrative regulation.

(2) Abandonment of wells in unconsolidated formations. Drillers shall completely fill a well unsuitable for its intended use that is constructed only in unconsolidated formations and contains water under water table or atmospheric conditions. Clean, disinfected sand or gravel may be used as a fill material from the well bottom to the water table level. If the water-bearing formation consists of

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coarse sand or gravel and producing wells are located nearby, only sealing materials which do not adversely affect the producing wells shall be used. A driller shall not extend the sand or gravel fill any closer than ten (10) feet of the ground surface. The driller shall place a minimum of five (5) feet of neat cement grout, neat cement-bentonite slurry or bentonite above the sand or gravel fill. The driller shall fill the uppermost portion of the well above the cement or bentonite plug with clay or an impermeable material appropriate to the intended use of the land. Neat cement, a neat cement bentonite slurry, or bentonite may be used to fill the well to the ground surface.

(3) Abandonment of wells in consolidated formations. The driller shall completely fill a well unsuitable for its intended use that is constructed in consolidated formations or bedrock with neat cement, a neat cement-bentonite slurry, or bentonite, if there is no artesian flow of water in the well. The driller shall not use sand or gravel except for those wells for which a well record is on file with the cabinet. Use of sand or gravel shall be considered a special case and the method of filling and sealing such wells shall be subject to written approval by the cabinet prior to sealing. Under these conditions, the cabinet may allow the use of sand and gravel to fill through the water-producing horizon, if there is limited vertical movement of water in the formation and such movement will not adversely affect the quality or quantity of water in producing wells. The driller shall place neat cement or neat cement-bentonite grout or bentonite immediately above the sand and gravel fill, extending up to within five (5) feet of the ground surface. The driller shall fill the uppermost five (5) feet of the bore-hole with clay or an impermeable material appropriate to the intended use of the land. In the event the casing cannot be pulled or drilled out, the driller shall use bentonite slurry to fill the length of the casing.

(4) Abandonment of flowing artesian wells. The sealing of abandoned flowing artesian wells or wells which are unsuitable for their intended use and in which there is vertical movement of water between aquifers requires special attention. The driller shall notify the cabinet at least twenty-four (24) hours before such a well is to be sealed. The driller shall pressure cement such wells with neat cement mixed with the minimum quantity of water that will permit handling. In order to place the cement, the driller shall restrict flow. Gravel or stone aggregate not more than one-third (1/3) of the diameter of the hole may be placed through the water-bearing horizon, if its extent is known. The driller shall place a well packer, cast-iron plug, or temporary bridge at the bottom of the confining formation immediately overlying the artesian water-bearing horizon to seal off the flow. Temporary bridges shall consist only of inorganic materials except that patented devices containing expandable neoprene, plastic, and other elastomers, and specifically designed for use in well construction shall be acceptable. The driller shall place the neat cement grout in one (1) continuous operation from the top of the packer, plug or bridge to five (5) feet of the surface or to the bottom of an overlying water-bearing formation. In the latter situation it may be necessary to repeat the process described in this subsection. The driller shall fill the uppermost five (5) feet of the bore-hole with clay or an impermeable material appropriate to the intended use of the land.

Section 13. Monitoring Well Construction. (1) After July 1, 1991, no person shall construct or modify a monitoring well without having a valid certificate issued in accordance with KRS 223.400 through 223.460.

(2) Drillers shall construct monitoring wells to maintain existing natural protection against the introduction of pollutants into aquifers, prevent the entry of pollutants through the bore-hole, and prevent the intermingling of groundwater from different aquifers through the bore-hole. Compliance with this section shall not relieve the driller from specific requirements under other federal or state regulatory programs.

(3) The driller shall use materials in the construction of a monitoring well appropriate to the purpose of that well. The driller shall seal the annular space above the sampling depth with suitable material, such as cement grout or bentonite, in order to prevent the introduction of pollutants into the samples or the groundwater. The driller shall complete the well at least four (4) inches above ground level or shall install a waterproof flush mount device capable of preventing surface water run-off, pollutants and contaminants from

entering the well. The driller shall label the well with a Kentucky well tag. Within thirty (30) days after a monitoring well has been constructed or modified, the driller shall provide the well with a locking well cap.

(4) The driller shall provide the cabinet with a record of the well as specified in KRS 223.440.

(5) The record shall be submitted on the form entitled Kentucky Monitoring Well Record (DEP-8043). The following document is adopted and filed herein by reference: Kentucky Monitoring Well Record (DEP-8043) (January 1, 1991). Copies of this document may be obtained from the Environmental and Public Protection Cabinet, Division of Water, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410. The material is available for public inspection and copying during business hours of 8 a.m. to 4:30 p.m. at the Division of Water, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

(6) The owner shall ensure that monitoring wells are properly abandoned within thirty (30) days of the last sampling date or the determination is made that the monitoring well is unsuitable for use as a monitoring well.

(7) This section shall become effective on July 1, 1991.

TABLE A Required Minimum Distances From Lateral Sources of Pollutants	
Lateral Sources of Contamination	Minimum Distances for Clay & Loam Soils
Cess Pools	150 feet
Leaching Pit	100 feet
Pit Privy	75 feet
Subsurface Seepage Tile	75 feet
Lateral Fields	70 feet
Manure Piles	75 feet
Septic Tank	50 feet
Barnyard	50 feet
Sewers (noncast iron) (nonperforated)	50 feet
Sewers (cast-iron with watertight leaded or mechanical joints)	15 feet
Sewers (Schedule 40 or heavier plastic pipe with solvent cemented or elastomeric seal joints.) Pipe is solid pipe not perforated.	15 feet
Footing Drains (no connection to a sewer or a sump handling sewage)	10 feet
Pump House Floor Drain	2 feet
Cemeteries	75 feet
Property Lines	20 feet

TABLE B Casing and Liner Pipe Weights and Dimensions			
Size (inches)	External Diameter (inches)	Thickness (inches)	Weight (pounds per foot)
1	1.315	0.120	-
1 1/4	1.660	0.120	-
1 1/2	1.900	0.120	-
2	2.375	0.120	2.89
2 1/2	2.875	0.120	3.53
3	3.500	0.120	4.33
3 1/2	4.000	0.120	4.97
4	4.500	0.188	8.66
5	5.563	0.188	10.79
6	6.625	0.188	12.92
8	8.625	0.277	24.70
10	10.750	0.307	34.24
12	12.750	0.330	43.77
14	14.000	0.375	54.57
16	16.000	0.375	62.58
18	18.000	0.375	70.59
20	20.000	0.375	78.60

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Pipe sizes not listed that are less than eight (8) inches in diameter shall match listed values as closely as possible.  
Pipe sizes not listed that are eight (8) inches in diameter or greater shall be Schedule 30 pipe as a minimum.

TABLE C			
Plastic Casing and Liner Pipe Specifications			
Size (inches)	SDR	External Diameter (inches)	Minimum Wall (inches)
4	26	4.500	0.173
5	26	5.563	0.214
6	26	6.625	0.255
8	26	8.625	0.332
10	26	10.750	0.413
12	26	12.750	0.490
14	26	14.000	0.539
16	26	16.000	0.616

TABLE D		
Required Amounts of Disinfectant		
Disinfectant Diameter of Well in Inches	Volume of Water in Gallons Per Foot of Depth	Required for Each 100 Gallons of Water
3	0.37	Laundry Bleach (5.25% chlorine) = 3 cups
4	0.65	-
5	1.0	Hypochlorite Granules (70% chlorine) = 2 oz.
6	1.5	-
8	2.6	-
10	4.1	-
12	6.0	-

1 cup = 8 ounces measuring cup

(2 cups = 1 pint; 4 cups = 1 quart)

1 ounce = 1 heaping tablespoon granules

(16 ounces = 1 pound)

TABLE E							
Required Amounts of Disinfectant							
	Diameter of well (in feet)						
	3	4	5	6	7	8	10
Amount of 5.25% laundry bleach to use per foot of water (in cups)	1.5	3	4.5	6	9	12	18
Amount of 70% hypochlorite granules to use per foot of water (in ounces)	1	2	3	4	6	8	12

HENRY "HANK" LIST, Deputy Secretary for

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: August 14, 2008

FILED WITH LRC: August 14, 2008 at 11 a.m.

CONTACT PERSON: Abigail Powell, Regulations Coordinator,  
Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601,  
phone (502) 564-3410, fax (502) 564-0111.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peter Goodmann

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides a performance standard and minimum standards for the construction, modification, and abandonment of new water supply wells.

(b) The necessity of this administrative regulation: KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of

practice for water well construction.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a performance standard and minimum standards and requirements for construction, modification, and abandonment of new water supply wells.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This regulation establishes a performance standard for new water supply wells and amends minimum standards for the location, construction modification, and abandonment of water supply wells. The performance standard requires that the well prevent the migration of contaminants into the well or aquifer through the borehole or annulus. The regulation extends the time requirement for record submittal from 30 to 60 days, specifies that a "Water Well Owner's Guide" will be given to well owners with well construction record, strengthens and clarifies the variance requirements, incorporates industry standards (i.e. ASTM, NSF, ASSE) for materials used in well construction, modernizes the annulus seal requirements, enhances bored well requirements, prohibits the construction of driven point wells and jetted wells for potable use, and specifies that vents shall be installed for wells that are likely to produce natural gas.

(b) The necessity of the amendment to this administrative regulation: This regulation establishes a performance standard for new water supply wells and amends standards for the location, construction, modification, and abandonment of water supply wells, currently outlined in 401 KAR 6:310. The regulation was last amended in 1991 and significant changes have occurred in the industry over that period, including the emerging dominance of the rotary drilling method. In addition, research in the industry and subsequent standards for construction, modification, and abandonment have evolved, most notably that sealing materials (cf. drill cuttings) should be used to plug the annulus. This regulation modernizes the annulus seal requirements by requiring a minimum of sealing material to be used above the soil-bedrock interface or above the screen pack, as appropriate. Bored wells are used in one area of the Commonwealth, and it has been demonstrated that the current construction standards do not adequately protect the aquifer or the well from contaminants migrating in the borehole. This regulation enhances and clarifies bored well requirements, especially regarding the upper terminus and the annular seal. The regulation extends the time requirement for record submittal from 30 to 60 days, which will provide for increased electronic submittal of records to the cabinet providing for incorporation of information directly to the cabinet database and eliminating the need for significant data entry. The regulation strengthens and clarifies the variance requirements for wells that cannot be constructed according to the regulations. This regulation prohibits the construction of driven point and jetted wells for potable use because these wells cannot be sealed reliably to protect the migration of contaminants along the well into the aquifer and well, thereby making them unsafe for consumptive purposes. Some older wells in the eastern part of the state are located inside structures, such as well houses. Wells in this area commonly produce significant amounts of natural gas, which has lead to accumulations of natural gas in well houses at explosive levels. This regulation specifies that vents shall be installed for new wells in which naturally-occurring methane is likely or known to occur.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction, and KRS 224.70-100 authorizes the cabinet to establish administrative regulations to protect water quality. These amendments bring the existing regulation up to date with current standards of well construction and water quality standards.

(d) How the amendment will assist in the effective administration of the statutes: The performance standard will provide a clear test of the methods utilized in the construction of the well. The minimum standards for the construction, modification, and abandonment of new water supply wells provide clear direction to certified drillers regarding construction, modification, and abandonment of water supply wells.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 1,500 water supply well owners per year, approximately 80 water supply well drillers and 232 rig operators (who must become certified to continue drilling water supply wells), including as many as 171 drilling-consulting companies, the Division of Water, Kentucky Water Well Certification Board, and the Kentucky Ground Water Association.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will need to comply with the minimum standards for the location, construction, modification, and abandonment of water supplies wells as outlined in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The material costs to comply with this administrative regulation are estimated to range from approximately \$250 to approximately \$3,000, with costs varying considerably depending on depth and diameter of the well, geology at the well site, conditions at the site, and other factors.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will be in compliance with all statutory requirements laid out in KRS 223.400-460.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The water well drillers program has existed since 1985. Currently, the entire program requires approximately 6 FTEs (\$282,408) to effectively implement the program.

(b) On a continuing basis: As a result of new procedures currently being developed for implementation, the division anticipates that in the future this program will require fewer resources, approximately 3.5 FTEs (\$186,207 in current dollars) to operate on a continuous basis. This is a significant gain in efficiency; the savings will be realized by the implementation of electronic applications, recertification and well record submittal processes, as well as fewer water wells being drilled.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Water well drillers certification fees, including application, testing, and certification fees. Clean Water Act Section 106 grant for ground water, and general funds allocated by the legislature.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The division does not anticipate that this administrative regulation will result in a increased need for fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees, directly or indirectly.

(9) TIERING: Is tiering applied? Not applicable to this administrative regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Water, and those divisions of state or local government that would require a certified well driller to construct, modify, or abandon a water supply well, such as a municipally owned public water system.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.70-100, and 224.70-110 author-

ize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The water well drillers program has existed since 1985. Currently, the entire program requires approximately 6 FTEs (\$282,408) to effectively implement the program.

(d) How much will it cost to administer this program for subsequent years? As a result of new procedures currently being developed for implementation, the division anticipates that in the future this program will require fewer resources, approximately 3.5 FTEs (\$186,207 in current dollars) to operate on a continuous basis. This is a significant gain in efficiency; the savings will be realized by the implementation of electronic applications, recertification and well record submittal processes, as well as fewer water wells being drilled.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### ENVIRONMENTAL AND PUBLIC PROTECTION CABINET Department for Environmental Protection Division of Water (Amended After Comments)

#### 401 KAR 6:320. Certification of water well drillers.

RELATES TO: KRS 223.400-223.460 [223.400-223.460], 223.991, 224.10-010, 224.10-100, 224.10-410-224.470, [KRS Chapter 224,] Chapter 322, Chapter 322A, **EO 2008-507, 2008-531**

STATUTORY AUTHORITY: KRS 223.410, 223.420(1)(e), 223.435, 224.10-100, [223.425,] 224.70-100, 224.70-110[-1990 Ky. Acts chs. 209, 474]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420(1)(e) requires the cabinet to promulgate administrative regulations concerning examination and certification of water well drillers. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation provides for the certification of water well drillers, including the requirements for examination, application, and disciplinary action. [examinations, applications, and a fee schedule. These fees will partially reimburse the Cabinet's expenses for this program. The implementation of this fee schedule is required by HB 830 (1990).]

Section 1. General Requirements. (1) The cabinet shall issue a water well drillers certificate pursuant to KRS Chapter 223 to natural persons who qualify under this administrative regulation.

(2) The cabinet shall issue separate certificates for separate methods and activities as follows:

(a) Monitoring well driller. Separate certificates shall be issued

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for drilling monitoring wells. The certificates shall specify for which methods the certified driller is qualified to drill, including:

1. Cable tool drilling;
2. Air rotary drilling;
3. Mud rotary drilling;
4. Reverse rotary drilling;[;]
5. Jetting and driving wells in unconsolidated material; or
6. Boring and auguring in unconsolidated materials; **and**[-]

(b) Water supply well driller. Separate certificates shall be issued for drilling water supply wells. The certificates shall specify for which methods the certified driller is qualified to drill, including:

1. Cable tool drilling;
2. Air rotary drilling;
3. Mud rotary drilling;
4. Reverse rotary drilling;[;]
5. Jetting and driving wells in unconsolidated material; or
6. Boring and auguring in unconsolidated materials.

(3) A person **shall not construct, alter, repair, or abandon a water well without first obtaining**~~[who constructs, alters, repairs, or abandons water wells shall first obtain]~~ a water well driller's certificate from the cabinet.

(4) Each driller certified to drill water supply wells may construct, alter, repair, or abandon water supply wells using the drilling method or methods **specified on the driller's certificate**~~[for which the certified driller has passed the appropriate specialty examination]~~.

(5) Each driller certified to drill monitoring wells may construct, alter, repair, or abandon monitoring wells using the drilling method or methods **specified on the driller's certificate**~~[for which the certified driller has passed the appropriate specialty examination]~~.

(6) In order to receive a certificate, a driller shall:

(a) Provide an application pursuant to this administrative regulation;

(b) Pass **applicable examinations**~~[an examination]~~ taken pursuant to this administrative regulation;

(c) Demonstrate that the driller has the education and experience to qualify for a certificate pursuant to this administrative regulation; and

(d) Demonstrate that the driller's certificate is not under suspension, temporary revocation, or permanent revocation pursuant to Section **6(2)(6)** of this administrative regulation.

Section 2. Applications. (1) Each person desiring a certificate shall provide the Cabinet with an application.

(a) Each application for certification shall be accompanied by payment of the application fee specified in KRS 223.447.

(b) The application shall be made on the Water Well and Monitoring Well Driller's Certification Application, provided by the cabinet.

(2) The application shall include:

(a) The information required by KRS 223.425, including proof the applicant is eligible to be a driller pursuant to KRS 223.425(2);

(b) Proof of the insurance and bond required pursuant to KRS 223.430; and

(c)1. A notarized statement from a certified water well driller, a driller in another state, or another person who has directly supervised the applicant, that the applicant has worked under the driller's supervision for the statutory period of time pursuant to KRS **223.425(2)**~~[Chapter 223]~~; or

2. Notarized proof of other qualifying experience, including:

a. Employment as an environmental professional working with the design and installation of wells and well drilling operations for a minimum of two (2) years; and

b. One (1) of the following:

(i) Employment as a registered professional geologist in accordance with KRS Chapter 322A;

(ii) Employment as a registered professional engineer in accordance with KRS Chapter 322; or

(iii) A graduate, bachelors, or associates degree in a natural science.

Section 3. Examinations. (1) All persons receiving a certification shall pass an exam.

(2) The cabinet shall prepare and administer the **examinations**

~~that determine~~~~[examination that determines]~~ the knowledge, ability, and judgment of approved applicants in accordance with Section 2 of this administrative regulation.

(a)1. **Examinations**~~[Examination]~~ shall be administered at least annually at a place and time scheduled by the cabinet.

2. The cabinet shall provide an advanced announcement of each examination and the availability of National Groundwater Association examinations.

(b) Arrangements may be made with the cabinet to take the examination at an alternate time.

(3) The cabinet shall administer the examination only to a qualified applicant who has:

(a) Submitted a complete application;

(b) Met all requirements of KRS 223.425;

(c) Met all requirements of Sections 1 and 2 of this administrative regulation; and

(d) Paid all applicable fees for the examination as listed in KRS 223.447.

(4) The cabinet shall certify those applicants who pass the applicable examination.

(a) Each applicant shall achieve a score of not less than seventy (70) percent to pass each examination administered.

(b)1. Each applicant who does not pass an examination may repeat the examination after forty-five (45) days from the date the applicant is notified of the results.

2. An applicant shall not repeat an examination more than six (6) times per calendar year.

(c) Examinations shall not be returned to the applicant, but the applicant may review results with a member of the board or an employee of the cabinet upon request.

(5) Contents of the examination.

(a) For a certificate to drill water supply wells, an examination shall consist of the following:

1. The Kentucky Water Well Certification Examination;

2. The National Ground Water Association General Exam; and

3. One (1) or more of the following National Ground Water Association specialty examinations applying to each drilling method for which the applicant wishes to be certified:

a. Cable Tool Drilling Exam;

b. Air Rotary Drilling Exam;

c. Mud Rotary Drilling Exam;

d. Reverse Rotary Drilling Exam;

e. Jetting and Driving Wells in Unconsolidated Material Exam;

f. Boring and Augering in Unconsolidated Materials Exam; or

g. A substitute examination as identified or developed jointly by the cabinet and the board testing for knowledge of local laws or regulations in accordance with KRS 223.410.

(b) For a certificate to drill monitoring wells using hollow stem auger, solid stem auger, or direct push method, an examination shall consist of the following:

1. The Kentucky Monitoring Well Certification Examination;

2. The National Ground Water Association General Exam; and

3. The National Ground Water Association Augering and Monitoring Exam or a substitute examination as identified or developed jointly by the cabinet and the board testing for knowledge of local laws or regulations in accordance with KRS 223.410.

(c) For a certificate to drill monitoring wells using another method, an examination shall consist of the following:

1. The Kentucky Monitoring Well Certification Examination;

2. The National Ground Water Association General Examination;

3. The National Ground Water Association Augering and Monitoring Exam; and

4. One (1) or more of the following National Ground Water Association specialty examinations applying to each drilling method for which the applicant wishes to be certified:

a. Cable Tool Drilling Exam;

b. Air Rotary Drilling Exam;

c. Mud Rotary Drilling Exam;

d. Reverse Rotary Drilling Exam;

e. Jetting and Driving Wells in Unconsolidated Material Exam;

f. Boring and Augering in Unconsolidated Materials Exam; or

g. A substitute examination as identified or developed jointly by the cabinet and the board testing for knowledge of local laws or



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regulations in accordance with KRS 223.410.

Section 4. Issuance of Certificate. (1) Upon satisfactory fulfillment of the requirements of this administrative regulation, the cabinet shall issue a certificate to the applicant designating the classification of drilling for which the driller has demonstrated competence.

(2) If the driller's employment or mailing address changes from that listed on the application, the driller shall provide written notification to the cabinet within thirty (30) days.

(3) Display of certificate number.

(a) A certified well driller shall have the certificate number affixed and prominently displayed on the drill rig used at the well site.

(b) The certificate number shall be inscribed in the following manner: KY. CERT. XXXX-XXXX (insert certificate number in place of the Xs).

(c) Numbers shall be at least three (3) inches in height and of a color that shall be easily distinguishable from that of the drill rig.

(d) This number shall be removed if the drill rig is scrapped, sold, or otherwise changes ownership, or if the certified well driller's certificate becomes invalid.

Section 5. Service of Process. Each applicant and driller shall provide the cabinet an address for receipt of applicable legal documents for service of process. The last address provided to the cabinet pursuant to this provision shall be the address at which the cabinet shall tender applicable legal notices in connection with an enforcement or disciplinary action.

Section 6. Disciplinary Action. (1) A driller shall be subject to disciplinary action if the driller:

(a) Practiced fraud or deception in obtaining a certificate or filing cabinet mandated reports;

(b) Did not use reasonable care or judgment in the performance of duties;

(c) Failed to apply knowledge in the performance of duties;

(d) Is incompetent, unable, or unwilling to properly perform duties; or

(e) Does not have bond and insurance required by KRS 223.430.

(2) The disciplinary action shall take the form of the following sanctions depending on the severity, duration, and number of the violations:

(a) Probation, not to exceed one (1) year;

(b) Suspension of the driller's certificate, not to exceed one (1) year, during which the certificate shall be considered void;

(c) 1. Temporary revocation of the driller's certificate.

2. Temporary revocation shall be greater than [not be less than] one (1) year and not [not] more than four (4) years;

(d) Permanent revocation of the driller's certification; or

(e) Civil or criminal penalties against the driller.

(3) Initial review procedures. Written complaints against a driller, unless duplicative or frivolous, shall be reviewed at the next regularly scheduled board meeting.

(a) If the board decides complaints warrant further investigation, the driller shall be requested [advised] to appear before the board [to discuss the complaints levied].

(b) [4-] Upon completion of its review of the complaint and available facts, the board shall send its recommendation and supporting facts to the cabinet. [the review, the Board shall make a recommendation to the cabinet regarding the driller's status.

2. The board shall recommend that no action be taken or that the cabinet impose a sanction based on the findings of the investigation.]

(c) The cabinet shall decide whether to take disciplinary action against the driller based on the board's recommendation and supporting facts [review the evidence presented and the board's recommendations].

(d) The cabinet shall notify the driller of its decision and the facts supporting its decision. [1. Upon completion of the review, the cabinet shall make a final determination as to the action to be taken based on the findings of the investigation.

2. If the cabinet does not initiate the board's recommendation, the cabinet shall notify the board of the reasons an alternative

action was taken.]

(e) The cabinet shall notify the board of its decision and the facts supporting its decision. [The driller shall be advised by certified mail of the final determination, the reasons for the action, and the length of time for which the sanction shall apply.]

(4) Action taken by the cabinet pursuant to this section shall not preclude the cabinet from pursuing additional civil or criminal action.

(5)(a) A driller whose certificate has been suspended or revoked shall not drill wells.

(b) If a certificate is permanently revoked, the driller shall be ineligible to receive a certificate as a water supply well driller or monitoring well driller in the future.

(c) Experience gained during a suspension or temporary revocation shall not be included toward meeting the requirements of Section 7(5) of this administrative regulation.

(6)[(5)](a) Sanction review and removal. During the driller's probation or suspension the board and cabinet shall monitor the driller's work activities.

(b) At the end of the sanction period, the board shall recommend that the cabinet lift the sanction or take additional action [to the cabinet whether the sanction should be lifted or whether additional action is necessary] against the driller.

(7)[(6)] Pursuant to KRS 224.10-420(2), a driller who considers himself aggrieved by a disciplinary action of the cabinet may file a petition for a hearing with the cabinet.

Section 7. Expiration and Renewal of Certificates. (1) All certified water well drillers shall renew their certificates annually.

(2)(a) Certificates shall be valid from the date of issuance until the following June 30. If an initial certificate is issued after May 1, it shall be effective until June 30 of the next calendar year.

(b) Certificates shall be renewed by [on] July 1 of each year.

(3)(a) A certified water well driller desiring to renew a certificate shall file a renewal application with the cabinet and pay the fees specified in KRS 223.447.

(b) The renewal application shall [will] be made on the Well Driller's Certification Renewal Application.

(4)(a) If the certificate renewal fee is not received within sixty (60) days of the renewal date of July 1 [first], the certificate shall expire.

(b) Expired certificates may be renewed without examination within two (2) years, if the applicant pays the renewal fee, meets the continuing education requirements outlined in subsection five (5) of this section within the twelve (12) months prior to recertification, and meets all other statutory requirements.

(5) Certified water well drillers shall complete five (5) hours of continuing education for certificate renewal.

(a) Continuing education shall include correspondence courses, short courses, trade association meetings, and other job training courses relevant to water well construction.

(b) The certified driller shall obtain written approval from the cabinet prior to completing the continuing education training.

(c) The cabinet shall [may] approve continuing education training events for all drillers if the training meets the requirements of paragraph (a) of this subsection.

(d) An applicant for certificate renewal shall submit documentation of training with the renewal application.

Section 8. Certificates and Wallet Cards. (1) The cabinet shall provide certified drillers with certificates and wallet cards.

(2) The driller shall carry wallet cards at the job site.

Section 9. Rig Operators. Rig operator cards shall not be issued after the most recent effective date of this administrative regulation.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Water Well and Monitoring Well Driller's Certification Application", July [April] 2008; and

(b) "Well Driller's Certification Renewal Application", July [April] 2008.

(2) This material may be inspected, copied, or obtained, sub-

ject to applicable copyright law, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

**(3) This material may also be obtained from the Division of Water Web site, [www.water.ky.gov](http://www.water.ky.gov).**

[Examinations. (1) The water well drillers certification examination shall consist of three (3) parts:

(a) The National Water Well Association's Drillers Certification examination;

(b) The Kentucky Water Well Drillers Certification examination, which covers Kentucky's water well construction regulations or for monitoring well drillers the National Water Well Association's monitoring well construction examination; and

(c) One (1) or more of the following National Water Well Association's specialty examinations, covering the type of drilling for which the applicant wishes to be certified:

1. Cable tool drilling in rock;
2. Cable tool drilling in unconsolidated material;
3. Air rotary drilling in rock;
4. Air rotary drilling in unconsolidated material;
5. Mud rotary drilling in rock;
6. Mud rotary drilling in unconsolidated material;
7. Reverse rotary drilling in unconsolidated material;
8. Jetting and driving wells in unconsolidated material; and
9. Boring and augering wells in unconsolidated material

(2) The cabinet will administer examinations only to a qualified applicant who has:

- (a) Submitted an approved complete application; and
- (b) Has met all requirements of KRS 223.425.

(3) The cabinet will certify only those applicants who pass the applicable examinations. All listed applicants shall take the examination in subsection (1)(c) of this section for each type of drilling for which they seek certification. In addition prior to certification each driller shall pass the examinations listed in subsections (1)(a) and (b) of this section. A score of seventy (70) percent or better on each examination shall be required to pass. Each examination may be repeated as often as necessary.

(4) Those persons having two (2) years of experience drilling and installing monitoring wells as of July 1, 1991, shall be deemed exempt from the examination requirements of this administrative regulation and shall apply for and obtain a certificate by July 1, 1992.

(5) No person shall construct a monitoring well after July 1, 1991 without an approved certification. No person shall construct any other type of water wells without an approved certificate.

(6) The cabinet will schedule examinations as necessary.

Section 2. Fees. (1) An application fee of twenty-five (25) dollars shall be submitted with each application.

(2) An examination fee of forty (40) dollars shall be submitted prior to examination.

(3) The certification fee shall be \$100.

(4) The certification renewal fee shall be \$100.

(5) Fees shall be paid by a check or money order made payable to the Kentucky State Treasurer.

Section 3. Expiration and Renewal of Certificates. (1) Certificates are valid from date of issuance until the following June 30. Certificates shall be renewed on July 1 of each year.

(2) If the certificate renewal fee is not received within sixty (60) days of the renewal date of July 1, certification shall expire. Expired certificates may be renewed without examination within two (2) years, if the renewal fee is paid and all other statutory and regulatory requirements have been met.

(3) Certified water well drillers or monitoring well drillers shall complete three (3) hours of training for certificate renewal. Such training may include, but is not limited to, correspondence courses, short courses, trade association meetings, and on-the-job training courses. An applicant for certificate renewal shall submit documentation of training with the renewal application.

Section 4. Wall Certificates and Wallet Cards. (1) The cabinet will provide certified drillers with wall certificates and wallet cards. Wallet cards shall be carried by the driller while at the job site.

(2) The cabinet will provide wallet cards for rig operators for use during a certified driller's absence from the job site upon submission of a complete application by the certified driller. These

cards shall be carried by the rig operators while at the job site. ]

HENRY "HANK" LIST, Deputy Secretary for  
LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: August 14, 2008

FILED WITH LRC: August 14, 2008 at 11 a.m.

CONTACT PERSON: Abigail Powell, Regulations Coordinator,  
Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601,  
phone (502) 564-3410, fax (502) 564-0111.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peter Goodman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the construction of monitoring wells, including temporary monitoring wells, and provides minimum standards for location, construction, modification, and abandonment.

(b) The necessity of this administrative regulation: KRS 223.435 requires the secretary of the cabinet to promulgate administrative regulations establishing standards of practice for water well construction.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction. KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for the construction of monitoring wells, including temporary monitoring wells, and provides minimum standards for location, construction, modification, and abandonment.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment corrects technical errors, clarifies the variance procedure, clarifies requirements for well casing, and requires drillers to submit forms to the Division of Waste Management, if applicable.

(b) The necessity of the amendment to this administrative regulation: The amendment was necessary to address comments received during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction, and KRS 224.70-100 authorizes the cabinet to establish administrative regulations to protect water quality. The amendment brings the existing regulation up to date with current standards of well construction and water quality standards.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies requirements of the administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 500 – 1000 monitoring well owners/year, approximately 150 certified monitoring well drillers, as many as 232 or more rig operators (who must become certified to continue drilling water supply wells), as many as 171 drilling/consulting companies, the Division of Water, the Division of Waste Management, Kentucky Water Well Certification Board, and the Kentucky Ground Water Association.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will need to comply with the minimum standards for the location, construction, modification and abandonment of monitoring wells as outlined in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The material costs to comply with the administrative regulation are estimated to range from approximately \$400 to approximately \$5,000, with costs varying considerably depending on depth and diameter of the well, geology at the well site, conditions at the site, and other factors.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will be in compliance with all statutory requirements laid out in KRS 223.400-460.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The water well drillers program has existed since 1985. Currently, the entire program requires approximately 6 FTEs (\$282,408) to effectively implement the program.

(b) On a continuing basis: As a result of new procedures currently being developed for implementation, the division anticipates that in the future this program will require fewer resources, approximately 3.5 FTEs (\$186,207 in current dollars) to operate on a continuous basis. This is a significant gain in efficiency; the savings will be realized by the implementation of electronic applications, re-certification and well record submittal processes, as well as fewer water wells being drilled.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Water well drillers certification fees, including application, testing, and certification fees. Clean Water Act Section 106 grant for ground water, and general funds allocated by the legislature.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The division does not anticipate that this administrative regulation will result in a increased need for fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees, directly or indirectly.

(9) TIERING: Is tiering applied? Not applicable to this administrative regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Water, the Division of Waste Management, and those divisions of state or local government that would require a certified well driller to construct, modify, or abandon a monitoring well at state or local government-owned property undergoing groundwater investigation, remediation or monitoring, such as a municipally owned landfill.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 223.410 requires the cabinet to certify water well drillers. KRS 223.420 requires the cabinet to promulgate administrative regulation concerning examination and certification of water well drillers. KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This

administrative regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The water well drillers program has existed since 1985. Currently, the entire program requires approximately 6 FTEs (\$282,408) to effectively implement the program.

(d) How much will it cost to administer this program for subsequent years? As a result of new procedures currently being developed for implementation, the division anticipates that in the future this program will require fewer resources, approximately 3.5 FTEs (\$186,207 in current dollars) to operate on a continuous basis. This is a significant gain in efficiency; the savings will be realized by the implementation of electronic applications, re-certification and well record submittal processes, as well as fewer water wells being drilled.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### ENVIRONMENTAL AND PUBLIC PROTECTION CABINET Department for Environmental Protection Division of Water (Amended After Comments)

#### 401 KAR 6:350. Monitoring well construction practices and standards.

RELATES TO: KRS 223.400 -223.460, 223.991, 224.01-405, 224.43-010 - 224.43-815, 224.46-012 - 224.46-870, 224.60-100 - 224.60-160, EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 151.110, 223.435, 224.10-100, 224.70-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the Secretary of the [Environmental and Public Protection] Cabinet to promulgate administrative regulations establishing standards of practice for water well construction. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes requirements for the construction of monitoring wells, including temporary monitoring wells, and provides minimum standards for location, construction, modification, and abandonment.

Section 1. General Requirements. (1) Certified monitoring well driller requirement. Each monitoring well shall be constructed, modified, or abandoned by natural persons certified in accordance with KRS 223.425 and 401 KAR 6:320.

(2) Construction and well performance requirement. Permanent and temporary monitoring wells shall be constructed, modified, and abandoned in such a manner as to prevent the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials.

(3) Reporting requirement. Within sixty (60) days after completion, modification, or abandonment of a monitoring well or temporary monitoring well, the certified monitoring well driller shall submit a report of well construction to the cabinet.

(a) All information about the depth and the materials used in the monitoring well construction, modification, or abandonment shall also be recorded.

(b) The report shall be submitted on the form Uniform Kentucky Well Construction Record.

(4) Records to monitoring well owner. The certified monitoring well driller shall provide a copy of the Uniform Kentucky Well Construction Record to the monitoring well owner within sixty (60) days after a monitoring well has been constructed, modified, or abandoned.

(5) The certified well driller shall tag each well constructed or modified with a well identification number tag provided by the cabinet.

net.

(a) An existing well identification number shall be included on the Uniform Kentucky Well Maintenance and Plugging Record for any well being modified or abandoned.

(b) If a well identification number does not exist at the time of modification or abandonment, the certified driller shall tag the well, as appropriate, and include the well identification number assigned in the Uniform Kentucky Well Maintenance and Plugging Record.

(6) Variance. If conditions exist or are believed to exist ~~at a monitoring well site~~ that preclude compliance with the requirements of this administrative regulation, the certified ~~monitoring~~ well driller may request a variance from the water well drillers program prior to well construction or well abandonment. The variance request shall be submitted in writing on the Kentucky Monitoring Well Variance Request form.

(a) The variance shall include the following:

1. A thorough description of the land use at the site and at adjacent and surrounding properties;

2. Distance between the proposed monitoring-well location and other existing water-supply wells or monitoring wells on adjacent properties;

3. Distance between the proposed monitoring-well location and potential pollution sources, both on site and on adjacent properties, including septic systems, sewers, petroleum and chemical storage tanks, or other potential pollution sources;

4. A description of the geologic conditions expected at the site, including soil thickness, type of bedrock, if present, perched water, confining zones, and depth to groundwater; ~~and~~

5. A summary of the provisions, including the section numbers of this administrative regulation, for which the variance is requested;

6. A justification for the variance; and

7. Proposed construction, modification, or abandonment procedures to be used in lieu of compliance with this administrative regulation and an explanation as to how the alternate well construction procedures ensure the protection of the quality of the groundwater and the protection of ~~that shall ensure the protection of groundwater quality and~~ public health and safety.

(b) Written variance procedure. The driller shall request a variance and obtain cabinet approval before well construction begins.

1. The driller shall submit the Kentucky Water Well Variance Request form, signed by the certified driller and well owner, and obtain written cabinet approval before well construction begins.

2. The cabinet shall notify the applicant in writing within ten (10) days of its decision to either grant or deny the variance.

3. The cabinet shall not issue a variance if the proposed water supply well construction will not ensure the protection of groundwater quality and public health and safety.

(c) Verbal variance for an emergency.

1. A driller may request a verbal variance for an emergency if the delay incurred due to the written variance procedure in paragraph (b) of this subsection may result in:

a. Loss of access to potable water for the intended user;

b. Failure to address an existing or impending environmental emergency in accordance with KRS 224.01-400; or

c. A risk to public health or safety.

2. The cabinet shall not issue a variance if the proposed water supply well construction will not ensure the protection of groundwater quality and public health and safety.

3. Within fifteen (15) days of the date the cabinet approves the verbal variance for an emergency, the water well driller shall submit to Kentucky Water Well variance Request form, signed by the certified driller and well owner, to the cabinet.

(d) The variance approval shall list the conditions of the variance, including:

1. The approved alternate well construction procedures;

2. The well sampling requirements; and

3. The requirement to notify surrounding property and well owners of the variance, if applicable.

(e) The certified well driller may request a verbal approval for a variance, provided that the variance request shall be submitted to

the cabinet on the Kentucky Monitoring Well Variance Request within fifteen (15) days of the date the verbal variance is approved.

(c) 1. The cabinet shall notify the applicant in writing within ten (10) days of its decision to either grant or deny the variance.

2. The cabinet shall issue variance approvals by letter.

3. The cabinet shall not issue a variance if the proposed well construction will not ensure the protection of groundwater quality and public health and safety.

(d) The certified well driller shall submit a copy of the Kentucky Monitoring Well Variance Request form, signed by the certified driller and the well owner, [variance letter of approval along with the Uniform Kentucky Well Construction Record] to the cabinet and the monitoring well owner within sixty (60) days after the [a variance] well is [has been] completed.

Section 2. Design Factors. The certified monitoring well driller shall construct each monitoring well to comply with the following:

(1) Monitoring wells shall not be constructed in flood zones;

(a) If a reasonable location does not exist, monitoring wells may be constructed in flood zones providing the well is water tight and the well casing extends a minimum of two (2) feet above the maximum known flood elevation.

(b) Measures shall be taken during drilling and well construction to prevent the introduction or migration of contaminants to a water-bearing zone or aquifer; ~~[-]~~

(2) Water used in the drilling or decontamination process shall be potable; and

(3) Each water-bearing zone that is intercepted during the drilling phase but not intended for groundwater monitoring; ~~which is not intended for groundwater monitoring, intercepted during the drilling phase~~ shall be sealed off to prevent down-hole cross contamination before advancing the borehole.

(a) Each water-bearing zone that is intercepted during the drilling phase but not intended for groundwater monitoring; ~~which is not intended for groundwater monitoring, intercepted during the drilling phase~~ shall be prevented from contributing to a well by installing outer casing with a watertight seal.

(b) The permanent outer casing shall have a minimum two (2) inch annulus between the borehole and the outside diameter of the outer casing and a minimum two (2) inch annulus between the outer casing and the inner casing.

(c) The outer casing shall be grouted with sealing materials using a grout pipe.

(d) A minimum cure time following the sealing material manufacturer's recommendation shall be required before drilling through the grout seal.

(e) Temporary outer casing may be installed ~~[by the hollow-stem auger method or sonic drilling method]~~.

Section 3. Monitoring Well Construction. (1) General Requirements.

(a) All permanent and temporary monitoring wells shall be constructed, modified, and abandoned in a manner as to prevent the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials.

(b) Monitoring wells shall be constructed in a manner as to yield both groundwater samples and groundwater-level measurements that shall be representative of the water-bearing zone or aquifer to be monitored.

(2) Boreholes.

(a) 1. Boreholes drilled in unconsolidated formations shall be a minimum of four (4) inches greater than the outside diameter of the well casing and well screen except for sonic wells, direct push wells, and temporary wells.

2. The driller shall clean out the open borehole if soil or rock fall into the open borehole during auger or drill-stem retrieval.

(b) Boreholes drilled in consolidated formations shall be a minimum of two (2) inches greater than the outside diameter of the well casing and screen.

(c) Boreholes drilled by the hollow-stem auger or sonic drill method shall have a minimum auger or casing inner diameter (ID) for the following:

1. Four and one quarter (41/4) inches ID for the installation of two (2) inch monitoring well casing; ~~[-]~~

2. Six and one quarter (61/4) inches ID for the installation of four (4) inch monitoring well casing; ~~or~~.]

3. Larger augers shall be required if installation difficulties due to geologic conditions or greater depths are anticipated.

(3)(a) Lubricant shall not be used on drill pipe threads, hollow-stem or solid-stem augers, or on the exterior of the drill pipe, unless approved in advance by the cabinet following the variance procedure in Section ~~1(6)~~~~1(4)~~ of this administrative regulation.

(b) A request to use a lubricant shall be submitted in writing to the water well drillers program, and a Material Safety Data Sheet (MSDS) for the proposed lubricant shall be submitted with the request.

(4)(a) If the air rotary drilling method is used drill cuttings shall be contained.

(b) Air rotary drills using screw compressor systems shall have a coalescing filter system that captures excess entrained compressor oils.

(5) Drilling Derived Waste (DDW) shall be properly containerized.

#### Section 4. Monitoring Wells Completed Below Ground Surface.

(1)(a) Flush mount wells may be used for parking lot areas with high traffic, and limited space, such as Underground Storage Tank (UST) facilities, if installed in a manner that prevents surface water or contaminants from migrating into the well.

(b) Monitoring wells completed below ground surface shall have a **flush-mount manhole**~~[flush-mount man-hole]~~ with a bolt-down well cover and waterproof seals installed to prevent the inflow of surface water and contaminants.

(2) The concrete surface pad shall slope away from the monitoring well to prevent precipitation or contaminants from accumulating around the well.

(3) Waterproof seals shall be installed between the cover and the box, and O-rings or gaskets shall be installed around the bolts that mount on the cover.

(4) The cover shall consist of material able to withstand the maximum expected loadings.

(5) A water-tight lockable cap shall be attached to the top of the well casing.

(6) The well casing shall be cut so that the locking cap shall install properly and provide a waterproof seal.

Section 5. Direct Push Monitoring Wells. ~~(1)~~ Direct push monitoring wells installed using direct push technology shall **be constructed, modified, and abandoned in such a manner as to prevent the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials.**

**(2) Temporary monitoring wells shall be constructed in such a manner as to yield both groundwater samples and groundwater level measurements that shall be representative of the water-bearing zone or aquifer to be monitored.**

~~(3)~~~~[comply with this administrative regulation.]~~ Direct push monitoring wells shall also comply with the following additional standards:

~~(a)~~~~[(4)]~~ The outside diameter of the borehole shall be a minimum of one (1) inch greater than the outside diameter of the well casing;

~~(b)~~~~[(2)]~~ Premixed bentonite slurry or bentonite chips with a minimum of one-eighth (1/8) inch diameter shall be used in the sealed interval below the static water level; and

~~(c)~~~~1. [(3)(a)]~~ Direct push monitoring wells shall not be constructed through more than one (1) water-bearing formation unless the upper water bearing zone is isolated by temporary or permanent casing.

~~2. [(b)]~~ The direct push tool string may serve as temporary casing.

(4) Prepacked well screens may be used.

Section 6. Temporary Monitoring Wells. (1) Temporary monitoring wells shall be constructed, modified, and abandoned in such a manner **as** to prevent the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials.

(a) Temporary monitoring wells shall be constructed in such a manner as to yield both groundwater samples and groundwater level measurements that shall be representative of the water-bearing zone or aquifer to be monitored.

(b) The annulus between the borehole and the well casing shall be sealed at the surface with a bentonite seal to prevent surface water from migrating into the borehole.

(2) Each temporary monitoring well shall be properly abandoned within seventy-two (72) hours after the well was constructed.

(3)(a) A record of a temporary monitoring well constructed and abandoned shall be submitted by the certified driller on the Uniform Kentucky Well Maintenance and Plugging Record to the cabinet and the monitoring well owner within sixty (60) days from the date abandoned.

(b) A copy of the Uniform Kentucky Well Construction Record and the Uniform Kentucky Well Maintenance and Plugging Record shall also be submitted to the Division of Waste Management program regulating the facility, if applicable.

#### Section 7. Materials for Monitoring Wells and Temporary Monitoring Wells.

(1) Well casing and screens.

(a) Monitoring well casing and well screen materials shall be constructed of materials determined on a site-specific basis to ensure that the integrity of the material shall not be affected by contaminants or introduce contaminants to the groundwater.

(b) Well casing and screens shall be resistant to chemical and microbiological corrosion and degradation.

(c) Monitoring well casings and screens shall be able to withstand the physical forces acting upon them during and following their installation, and during their use. This includes force due to suspension in the borehole, grouting, development, purging, pumping, sampling, and forces exerted on the well casing and screens by the surrounding geologic materials.

(d) The certified driller shall not install used, damaged, or contaminated well casing or screens.

(e) Well casing and screens shall have a minimum inside diameter of two (2) inches except for direct push and temporary wells.

(2) Joints and couplings.

(a)1. All joints and couplings shall be flush type.

2. All joints shall be watertight.

(b) The monitoring well casing shall extend a minimum of two and one half (2 1/2) feet above ground surface, **except as provided for in Section 4 of this administrative regulation.**

(c)1. A minimum annular space of two (2) inches shall be maintained between the borehole wall and the outside diameter of the monitoring well casing.

2. In a multi-cased monitoring well the annulus between the well casings shall be a minimum of two (2) inches.

(d) Centralizers shall be used in monitoring wells greater than fifty (50) feet in depth.

(e) Centralizers shall be installed at a minimum of ten (10) foot intervals.

(3) Filter pack.

(a)1. The filter pack materials shall consist of clean, rounded to well-rounded, insoluble particles of quartz silica composition.

2. The filter pack materials shall be of a size that minimizes head losses through the filter pack and prevents sediment movement through the well screen into the well.

(b) The filter pack shall be placed in the annulus in such a manner as to prevent bridging. At a minimum the filter pack shall be placed slowly and carefully by the free-fall method.

(c) The depth to the filter pack shall be continually monitored during installation.

(d)1. A minimum of six (6) inches of filter pack shall be placed below the bottom of the well screen.

2. The filter pack shall extend **at least** two (2) feet above the top of the well screen.

(e) Prepacked well screens may be used if the filter-pack material, filter-pack grain size, and the screen slots are properly sized for the monitoring zones.

(4) Sealing Materials.

(a) Only potable water shall be used in mixing sealing materials used in the construction or abandonment of monitoring wells.

(b) The sealing material shall be placed in the annulus by a grout pipe, starting at the top of the bentonite seal to within three (3) feet of the ground surface.

(c) Side-discharge grout pipes shall be used if sealing the annulus for wells that are 100 feet deep or greater.

(d) **The concrete surface pad or surface casing shall not be installed until the sealing materials placed in the annulus have settled and cured.** [The sealing material shall set for a minimum of twenty-four (24) hours before the concrete surface pad or surface casing is installed.]

(e) Bentonite seal.

1. The bentonite seal shall consist of high solids sodium bentonite pellets with a minimum of thirty (30) percent solids and shall be placed in the annulus by a method that ensures the prevention of bridging.

2.a. The depth to the bentonite seal shall be continually monitored during installation.

b. The bentonite seal shall extend a minimum of two (2) feet above the top of the filter pack.

3.a. Hydration time of the bentonite seal shall be according to the manufacturer's recommendation.

b. Only potable water shall be used, if necessary, as the hydration medium.

c. The surface opening and the annulus shall be protected during the hydration period to prevent material from falling into the borehole.

(f) Annular seal.

1. The annular seal shall be installed in such a manner as to prevent the migration of contaminants or pollutants along the monitoring well annulus into the well.

2. The sealing material shall be placed so that pollutants cannot migrate through the annulus.

3. The sealing materials shall not have a harmful **effect**[**affect**] on the well casings or screens or damage the surface completion of the well.

#### Section 8. Surface Completion. (1) Surface casing.

(a) Monitoring wells completed with the well casing extending above ground surface shall be constructed with a steel, **anodized aluminum, or PVC** outer protective surface casing with a locking cap.

(b) A water tight well cap shall be installed on the well casing.

(c) The well casing shall be cut in a manner so that the locking cap shall install properly and provide a waterproof seal.

1.a. Outer protective surface casings shall have a minimum of two (2) inches of clearance between the inside diameter of the outer protective casing and the outside diameter of the well casing.

b. The outer protective surface casing shall extend a minimum of one (1) inch and a maximum of **twelve (12)**[**four (4)**] inches above the inner well casing.

c. The outer protective surface casing shall be installed by pouring a concrete slurry mix [of fifty (50) percent cement and fifty (50) percent sand and gravel] into the borehole from the top of the **annular seal**[annulus] to the ground surface.

2. The outer protective surface casing shall then be pushed into the wet concrete slurry a minimum of two (2) feet below the ground surface.

3. The outer protective surface casing shall have a minimum of two (2) weep holes for drainage. The weep holes shall be a minimum diameter of one-quarter (1/4) inch and shall be located directly above the top of the concrete surface pad.

4. The outer protective surface casing shall [be painted a highly visible color and] bear the Kentucky Water Well Tag **with the**[and] water well number.

(2) Bumper guards. Monitoring wells extending above ground surface shall have four (4) protective bumper guards consisting of steel pipes a minimum of three (3) inches in diameter and a minimum of five (5) feet in length.

(a)1. The bumper guards shall be installed to a minimum depth of two (2) feet below ground surface in a concrete footing and shall extend a minimum of three (3) feet above ground surface.

2. Concrete shall be placed into the steel pipe bumper guards

for additional strength.

(b) The bumper guards shall be painted a highly visible color.

(c) A modification to the bumper guard requirement shall be pre-approved by the water well drillers program according to the variance procedure in Section **1(6)**[**4(4)**] of this administrative regulation.

(3) Concrete surface pad.

(a) All monitoring wells shall have a concrete surface pad a minimum of six (6) inches thick **with a minimum three (3) foot diameter or square pad centered on**[-, extending a minimum of two (2) feet around] the well.

(b) The concrete surface pad shall slope away from the monitoring well in a manner **as** to prevent precipitation or contaminants from accumulating around the well.

Section 9. [Monitoring Well Abandonment. (1) General requirements. A monitoring well which has been damaged, or is otherwise unsuitable for use as a monitoring well, shall be abandoned within thirty (30) days from the last sampling date or thirty (30) days from the date it is determined that the well is no longer suitable for its intended use.

(a) Monitoring wells shall be abandoned in such a manner as to prevent the migration of surface water or contaminants to the subsurface and to prevent migration of contaminants among water bearing zones.

(b) A Division of Waste Management program that permits or regulates the facility at which a monitoring well is to be abandoned shall be notified a minimum of ten (10) working days prior to abandonment of each monitoring well.

(c) Each temporary monitoring well shall be abandoned within seventy-two (72) hours after installation.

(d)1. A record of a monitoring well abandoned shall be submitted by the certified driller on the Uniform Kentucky Well Maintenance and Plugging Record to the water well drillers program within sixty (60) days from the date abandoned.

2. A copy of the Uniform Kentucky Well Maintenance and Plugging Record shall be submitted to the cabinet program regulating the facility, if applicable.

(2) Abandonment methods and sealing materials for all types of monitoring wells.

(a) The surface casing, monitoring well casing, well screen, filter pack, bentonite seal, and cement shall be removed.

(b) The borehole shall be plugged with sealing material by grout pipe method or by pressure injection from the bottom of the boring to the top of the borehole, except as provided in paragraph (c) of this subsection.

(c) The borehole may be plugged using the gravitational displacement, or free-flow method to a maximum depth of fifty (50) feet. If this method is employed, the well driller shall use bentonite with a minimum particle size of three-eighth (3/8) inches, and the bentonite shall be used according to the manufacturer's recommendation.

(d) The top two (2) feet of the borehole shall be filled with materials consistent with surrounding ground surface.

(e) If the well casing cannot be removed, an alternate method of abandonment may be employed, if approved in advance by the cabinet in accordance with the variance process in Section 1(4) of this administrative regulation.

Section 10. Well Development. (1) Newly installed monitoring wells shall be developed [by removing a minimum of five (5) well volumes of water from the well and pumping the well dry three (3) times in a twenty-four (24) hour period or] until the column of water in the well is free of visible sediment.

(2) This well-development protocol **shall not be used**[is not intended to serve] as a method for purging prior to water quality sampling.

Section 10. [4.] Repairs or modifications to the well casing shall be performed by a certified monitoring well driller and shall be reported to the water well drillers program on the Uniform Kentucky Well Maintenance and Plugging Record.

#### Section 11. Monitoring Well Abandonment. (1) General

requirements. A monitoring well that has been damaged or is otherwise unsuitable for use as a monitoring well, shall be abandoned within thirty (30) days from the last sampling date or thirty (30) days from the date it is determined that the well is not longer suitable for its intended use.

(a) Monitoring wells shall be abandoned in such a manner as to prevent the migration of surface water or contaminants to the subsurface and to prevent migration of contaminants among water bearing zones.

(b) A Division of Waste Management program that permits or regulates the facility at which a monitoring well is to be abandoned shall be notified a minimum of ten (10) working days prior to abandonment of each monitoring well.

(c) Each temporary monitoring well shall be abandoned within seventy-two (72) hours after installation.

(d)1. A record of the monitoring well abandonment shall be submitted by the certified driller on the Uniform Kentucky Well Maintenance and Plugging Record to the water well drillers program within sixty (60) days from the date abandoned.

2. A copy of the Uniform Kentucky Well Maintenance and Plugging Record shall be submitted to the cabinet program regulating the facility, if applicable.

(2) Abandonment methods and sealing materials for all types of monitoring wells.

(a) The surface casing, monitoring well casing, well screen, filter pack, bentonite seal, and cement shall be re-moved.

(b) The borehole shall be plugged with sealing material by grout-pipe method or by pressure injection from the bottom of the boring to the top of the borehole, except as provided in paragraph (c) of this subsection.

(c) The borehole may be plugged using the gravitational displacement, or free-flow method to a maximum depth of fifty (50) feet. If this method is employed, the well driller shall use bentonite with a minimum particle size of three-eighths (3/8) inch, and the bentonite shall be used according to the manufacturer's recommendation.

(d) The top two (2) feet of the borehole shall be filled with materials consistent with the surrounding ground surface.

(e) If the well casing cannot be removed, an alternate method of abandonment may be employed, if approved in advance by the cabinet in accordance with the variance process in Section 1(6) of this administrative regulation.

Section 12. Division of Waste Management Program Requirements. (1) Prior to the installation or abandonment of a monitoring well at a facility regulated by the Division of Waste Management, all monitoring-well construction designs and all monitoring-well materials shall be pre-approved by the Division of Waste Management in accordance with the requirements in KRS 224.01-400, 224.01-405, 224.43-010 through 224.43-815, 224.46-012 through 224.46-870, and 224.60-100 through 224.60-160.

(2) The Division of Waste Management regulating program shall be notified at least ten (10) working days prior to a monitoring-well construction, modification, or abandonment so that a cabinet representative may be present at the construction, modification, or abandonment.

(3) A copy of the Uniform Kentucky Well Construction Record and the Uniform Kentucky Well Maintenance and Plugging Record shall be submitted to the Division of Waste Management program regulating the facility, if applicable.

Section 13. Documents Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Uniform Kentucky Well Construction Record", April 2008;

(b) "Uniform Kentucky Well Maintenance and Plugging Record", April 2008; and

(c) "Kentucky Monitoring Well Variance Request", July[April] 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Division of

Water Web site, [www.water.ky.gov](http://www.water.ky.gov).

HENRY "HANK" LIST, Deputy Secretary for

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: August 14, 2008

FILED WITH LRC: August 14, 2008 at 11 a.m.

CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Abigail.Powell@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peter Goodmann

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the construction of monitoring wells, including temporary monitoring wells, and provides minimum standards for location, construction, modification, and abandonment.

(b) The necessity of this administrative regulation: KRS 223.435 requires the secretary of the cabinet to promulgate administrative regulations establishing standards of practice for water well construction.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction. KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for the construction of monitoring wells, including temporary monitoring wells, and provides minimum standards for location, construction, modification, and abandonment.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment corrects technical errors, clarifies the variance procedure, clarifies requirements for well casing, and requires drillers to submit forms to the Division of Waste Management, if applicable.

(b) The necessity of the amendment to this administrative regulation: The amendment was necessary to address comments received during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction, and KRS 224.70-100 authorizes the cabinet to establish administrative regulations to protect water quality. The amendment brings the existing regulation up to date with current standards of well construction and water quality standards.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies requirements of the administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 500 – 1000 monitoring well owners per year, approximately 150 certified monitoring well drillers, as many as 232 or more rig operators (who must become certified to continue drilling water supply wells), as many as 171 drilling-consulting companies, the Division of Water, the Division of Waste Management, Kentucky Water Well Certification Board, and the Kentucky Ground Water Association.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will need to comply with the minimum standards for the location, construction, modification and abandonment of monitoring wells as

outlined in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The material costs to comply with the administrative regulation are estimated to range from approximately \$400 to approximately \$5,000, with costs varying considerably depending on depth and diameter of the well, geology at the well site, conditions at the site, and other factors.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will be in compliance with all statutory requirements laid out in KRS 223.400-460.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The water well drillers program has existed since 1985. Currently, the entire program requires approximately 6 FTEs (\$282,408) to effectively implement the program.

(b) On a continuing basis: As a result of new procedures currently being developed for implementation, the division anticipates that in the future this program will require fewer resources, approximately 3.5 FTEs (\$186,207 in current dollars) to operate on a continuous basis. This is a significant gain in efficiency; the savings will be realized by the implementation of electronic applications, recertification and well record submittal processes, as well as fewer water wells being drilled.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Water well drillers certification fees, including application, testing, and certification fees. Clean Water Act Section 106 grant for ground water, and general funds allocated by the legislature.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The division does not anticipate that this administrative regulation will result in a increased need for fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees, directly or indirectly.

(9) TIERING: Is tiering applied? Not applicable to this administrative regulation.

fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The water well drillers program has existed since 1985. Currently, the entire program requires approximately 6 FTEs (\$282,408) to effectively implement the program.

(d) How much will it cost to administer this program for subsequent years? As a result of new procedures currently being developed for implementation, the division anticipates that in the future this program will require fewer resources, approximately 3.5 FTEs (\$186,207 in current dollars) to operate on a continuous basis. This is a significant gain in efficiency; the savings will be realized by the implementation of electronic applications, recertification and well record submittal processes, as well as fewer water wells being drilled.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Water, the Division of Waste Management, and those divisions of state or local government that would require a certified well driller to construct, modify, or abandon a monitoring well at state or local government-owned property undergoing groundwater investigation, remediation or monitoring, such as a municipally owned landfill.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 223.410 requires the cabinet to certify water well drillers. KRS 223.420 requires the cabinet to promulgate administrative regulation concerning examination and certification of water well drillers. KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,



PROPOSED AMENDMENTS RECEIVED THROUGH NOON, AUGUST 15, 2008

OFFICE OF THE GOVERNOR  
Kentucky Department of Veterans' Affairs  
(Amendment)

**17 KAR 3:020. Maximum charge for room and care at state veterans' nursing homes.**

RELATES TO: KRS 40.320, 40.325

STATUTORY AUTHORITY: KRS 40.325(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.320 identifies the Commonwealth's duty to provide for the well-being of elderly and disabled veterans within state veterans' nursing homes. KRS 40.325(2) authorizes the Department of Veterans' Affairs to promulgate any administrative regulations necessary to operate the homes in compliance with applicable state and federal statutes and regulations. This administrative regulation establishes the maximum monthly resident charge for room and care at state veterans' nursing homes.

Section 1. Definitions. (1) "Daily cost of care" means the total annual expenditures on nursing home operations divided by the total number of resident care days provided by the three (3) nursing homes during the course of the fiscal year.

(2) "Department" means the Kentucky Department of Veterans' Affairs.

(3) "Nursing home" means a state veterans' nursing home operated by the Kentucky Department of Veterans' Affairs.

(4) "Resident" means a veteran admitted to a state veterans' nursing home.

Section 2. Maximum Monthly Resident Charge. (1) The maximum charge for room and care services at a state veterans' nursing home shall be ~~\$3,500~~[\$3,300] per month, which shall include medical and nonmedical services provided by the nursing home.

(2) Medical services obtained from sources other than the nursing home may result in a charge from the source of care to the resident. These medical services may include:

- (a) X-ray;
- (b) Dental;
- (c) Optometry;
- (d) Hospitalization;
- (e) Ambulance service;
- (f) Hearing aids;
- (g) Podiatry;
- (h) Specialized medications not on the formulary; and
- (i) Specialty care and equipment.

(3) The maximum monthly charge shall be revised periodically based on changes that occur which affect the nursing homes' expenditures or sources of income. These changes may include:

(a) Increases in the daily cost of care prompted by inflation in the cost of goods, services, and labor utilized to provide nursing care;

(b) Availability of general funds appropriated to the department by the legislature for operation of the three (3) state veterans' nursing homes; or

(c) Changes in the per diem allocated by the U.S. Department of Veterans' Affairs.

(4) If changes are made to the maximum monthly charge, each affected resident shall be notified in writing at least thirty (30) days prior to the change taking effect. The maximum amount shall not be changed without an amendment to this administrative regulation made in accordance with KRS Chapter 13A.

LESLIE E. BEAVERS, Commissioner

APPROVED BY AGENCY: August 12, 2008

FILED WITH LRC: August 12, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2008, at 9 a.m., at Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their

intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David Worley, Executive Director, Office of Kentucky Veterans Centers, Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-9281, fax (502) 564-4036.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Worley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the maximum monthly charge for room and care services at state veterans' nursing homes. This maximum charge will be applied uniformly in determining a veteran's ability to pay for nursing home care in accordance with 17 KAR 3:010.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to ensure that facilities operated by the department maintain the financial ability to care for veterans requiring long term, nursing care services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 40.325(2) authorizes the Department of Veterans' Affairs to promulgate any administrative regulations necessary to operate the homes in compliance with applicable state and federal statutes and regulations. This administrative regulation establishes the maximum charge for room and care services within the state veterans' nursing homes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing a standardized monthly resident charge throughout the state veterans' nursing homes.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment increases the maximum monthly charge to residents from \$3,300 to \$3,500.

(b) The necessity of the amendment to this administrative regulation: It is a regulatory requirement to amend this regulation any time the maximum amount charged is changed. The substantive reason for this change relates to this agency's current budget and the need to increase the monthly charge in order to ensure skilled nursing care services may be properly funded.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with the letter of 17 KAR 3:020, requiring an amendment for any change in the monthly rate, and with KRS 40.325(2) which authorizes the Department of Veterans' Affairs to promulgate any administrative regulations necessary to operate the homes in compliance with applicable state and federal statutes and regulations. This administrative regulation establishes the maximum charge for room and care services within the state veterans' nursing homes and the amendment legally increases the maximum charge.

(d) How the amendment will assist in the effective administration of the statutes: This amendment implements the mission of the Kentucky Department of Veterans Affairs as that mission relates to the operation of state veterans' nursing homes, establishing a uniform maximum charge for residents.

(3) List the type and number of individuals, businesses, organizations or state and local government affected by this administrative regulation: There are three state-operated facilities affected by this administrative regulation. This administrative regulation primarily affects the 125 veteran residents of department facilities who have the resources to pay the maximum charge for their care.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will be required on the part of our veteran residents. Staff members of the three state veterans' nursing homes will be required to update literature and computer systems to reflect the \$3,500 per month maximum monthly charge established by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs of complying with this administrative regulation will be an additional \$200 per month for the 125 residents who pay the current maximum charge of \$3,300 per month.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will ensure that state operated facilities have sufficient revenues to maintain the high quality of care that is currently provided to all residents regardless of income.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Minimal

(b) On a continuing basis: Minimal

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds. The facilities operated by the department will be required to change the charge rates in their billing and record keeping systems.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: This administrative regulation increases the maximum charge rate for the three state veterans' nursing homes. This increase is necessary in order to continue the provision of long term nursing home care at current levels. No increase in funding will be required to implement this administrative regulation because functions of billing and financial recording keeping for state-operated facilities are already in place.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes fees by codifying the existing departmental policy for determining the maximum monthly room and care charge for the state veterans' nursing homes. Fees are increased by \$200 per month for the 125 residents who pay the current maximum charge of \$3,300 per month.

(9) TIERING: Is tiering applied? No tiering was applied in this administrative regulation, as the maximum monthly charge at the three state veterans' nursing homes is applied uniformly to all veterans in determining their ability to pay for nursing home care in accordance with 17 KAR 3:010.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Veterans Affairs.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 40.325(2).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? \$150,000

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? \$300,000

(c) How much will it cost to administer this program for the first year? The administrative body through compliance with this administrative regulation incurs no new costs.

(d) How much will it cost to administer this program for subsequent years? The administrative body through compliance with this administrative regulation incurs no new costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### KENTUCKY STATE BOARD OF ELECTIONS (Amendment)

#### **31 KAR 4:140. Submitting a Federal Post Card Application and absentee ballot request electronically.[Submitting absentee ballot applications to the Department of Defense Interim Voting Assistance System (IVAS) by electronic mail.]**

RELATES TO: KRS 116.995, 117.079, 117.085, 117.995, 119.265, 369.107, and 42 U.S.C. 1973

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.079, 42 U.S.C. 1973ff-1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.079 requires the board to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, as circumstances warrant and with the concurrence of the Attorney General. The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 42 U.S.C. 1973ff, authorizes the Department of Defense to implement a voting[an interim voting] assistance system for the purposes of expediting the absentee voting process for deployed members of the Armed Forces of the United States using existing [e-mail]technology. This administrative regulation implements a process for local elections officials to participate in the Department of Defense's system[IVAS].

Section 1. Section 1. Definitions. (1) "Absentee ballot application" means the Federal Post Card Application, Standard Form 76, electronically sent to the county clerk from FVAP[mailed to the county clerk from IVAS].

(2) "FVAP" means the Federal Voting Assistance Program, an office within the Department of Defense responsible for administering UOCAVA.

(3) "Instructions to voter sheet" means the "Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed or Electronically Sent an Absentee Ballot," SBE 46A.["IVAS" means the Department of Defense Interim Voting Assistance System.]

(4) "Registered voter" means a resident of Kentucky who is eligible to vote and is a military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States.[deployed member of the Armed Forces of the U.S.]

(5) "Voter verification sheet" means the SBE 46A, the form the registered voter signs and the voter assistance oath.

Section 2. Any county clerk's office that has online capabilities shall follow the process established by this administrative regulation in administering the Department of Defense's system through FVAP for the electronic transmission of Federal Post Card Applications and absentee ballot requests.

Section 3. Processing a Completed Application electronically[by Electronic Mail]. (1) If notification of a voter's[the] absentee ballot application is received electronically from FVAP[by electronic mail from IVAS] less than seven (7) days before the applicable election, the county clerk shall not process the application.

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(2) If notification of a voter's[the] completed absentee ballot application is received electronically from FVAP[by electronic mail from IVAS] not less than seven (7) days before the election, then the county clerk shall affix his or her seal to the absentee ballot application.

(3) The county clerk shall then verify the voter's eligibility. If the voter is eligible to vote in the current election, then the county clerk shall prepare an electronic copy, in a manner prescribed by FVAP[Portable Document Format (PDF)] of the original absentee ballot. The original absentee ballot is then marked "Electronically Sent to FVAP[Mailed to IVAS]" and retained.

(4) The original absentee ballot shall not be reused. The electronic copy of the original absentee ballot shall be sent electronically to FVAP[by electronic mail to IVAS], along with the Instructions to voter sheet and the voter verification sheet.

Section 4.[Section 3.] Voter's Instructions on Completing an Electronic Absentee Ballot Received From FVAP[IVAS]. (1) When a voter receives an absentee ballot electronically from FVAP[by electronic mail], the voter shall print the absentee ballot, mark the absentee ballot and seal it in an inner envelope.

(2) The voter shall then complete and sign the Voter Verification Sheet. If the voter requires assistance, the person rendering assistance shall complete the voter assistance section on the voter verification sheet.

(3) The voter shall print his or her name, voting address and precinct number on the back of the outer envelope as found on the voter verification sheet. The voter shall then seal the voter verification sheet and the inner envelope containing the absentee ballot in an outer envelope. The voter shall then sign across the back flap of the outer envelope. The voter shall print "Absentee Ballot" on the front of the outer envelope, but shall not obstruct the address area.

(4) The voter shall mail the envelope to the appropriate county clerk. The absentee ballot shall be required to be received, by 6 p.m. local time on Election Day[election day], to the county clerk through the mail in order to be counted.

Section 5. If any person has knowledge of a failure to execute the duties established by this administrative regulation, the person shall contact the State Board of Elections or the Attorney General's Office to make a complaint of a violation in accordance with KRS 116.995, 117.995(2), or 119.265.

Section 6.[Section 4.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Federal Post Card Application", Standard Form 76 (Rev. 10-2005);

(b) SBE 46A - "Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed or Electronically Sent an Absentee Ballot". (August 2008 edition)[SBE 46A - "Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed an Absentee Ballot" (December 2005 edition)]; and

(c) SBE 46B - "Voter Verification Sheet" (December 2005 edition).["]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Offices of the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TREY GRAYSON, Chair

JACK CONWAY, Attorney General

APPROVED BY AGENCY: August 7, 2008

FILED WITH LRC: August 8, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2008, at 10 a.m. local time at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by September 15, 2008, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a

written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kathryn H. Gabhart, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Gabhart

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: This administrative regulation implements the process by which Kentucky counties shall participate in the Department of Defense Federal Voting Assistance Program online absentee ballot server. This server will help to expedite the absentee voting process for military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, using existing electronic technology. This is a federal initiative under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff-1.

(b) The necessity of this administrative regulation: This regulation is necessary to further the aims of the Uniformed and Overseas Citizens Absentee Voting Act, KRS 117.079, and 117.085, to preserve the absentee voting rights of military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1) and 117.079 authorize the Board to promulgate administrative regulations governing the absentee voting process for military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation provides another option for and expedites the absentee voting process for military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States. Such persons may have little notice of their location on election day or during the days of absentee voting and the regular delays in the mail service make it impractical to follow the normal methods for absentee voting.

(2) If this is an amendment to an existing administrative regulation, provide a brief narrative summary of:

(a) How the amendment will change the existing administrative regulation: This amendment updates the most recent version the Instructions for Voting to a Qualified Kentucky Resident Who Has Been Faxed an Absentee Ballot Sheet, SBE 46A, and opens up the regulation to serve not only deployed military, but also their dependents and other Kentucky residents living overseas.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide an expedited absentee voting process to military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by opening up the regulation to serve not only deployed military, but also their dependents and other Kentucky residents living overseas, in accordance with KRS 117.079 and 42 U.S.C. 1973ff-1.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide the most reliable and convenient method in which military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States can vote by absentee ballot.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All eligible voters who are military personnel serving on active duty outside the United States and other residents of

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Kentucky residing outside the United States and all county clerks in counties that have online capabilities to enter the Department of Defense Federal Voting Assistance Program server. There are approximately ninety-six (96) counties that have the capability of entering the system.

(4) An assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment to an existing administrative regulation: The county clerks will have to establish a link to the Federal Voting Assistance Program's website, a user ID, and password to participate in the program. The county clerks will receive an email notification when there is activity on their account, such as the notification of a completed FPCA by a voter or a request for an absentee ballot. The county clerks and the voters who are members of the Armed Forces deployed overseas or overseas citizens will benefit from the expedited absentee voting process established by this administrative regulation.

(5) Estimate how much it will cost to implement this administrative regulation:

(a) Initially: The costs for the program are minimal and already included in the existing budget of these entities.

(b) On a continuing basis: The counties will only participate in the program beginning in August of each year a federal election occurs and until the November General Election of that year. Therefore, the costs will be minimal.

(6) The source of funding to be used for the implementation and enforcement of this administrative regulation: The costs must be borne by the counties. The counties are paid a per precinct reimbursement from the state general fund pursuant to KRS 117.345 for election expenses. The costs for the program are minimal and already included in the existing budget of these entities.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are or will be established by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all citizens.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government: Yes

(2) State what unit, part, or division of local government this administrative regulation will affect: All county clerks' offices that have electronic online capabilities to enter the Department of Defense FVAP server. There are ninety-six (96) counties that have online capabilities. State the aspect or service of local government to which this administrative regulation relates: the conduct of elections and absentee voting.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation:

(a) Revenues: This administrative regulation will not generate any revenues for the local governments.

(b) Expenditures: The costs associated with this administrative regulation are minimal and are subsumed in a county's existing election costs.

(c) Other Explanation: N/A

### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: 42 U.S.C. 1973ff-1, the Uniformed and Overseas Citizen Absentee Voting Act.

(2) State compliance standards: KRS 117.015(1) and KRS 117.079 authorize the Board to promulgate administrative regulations governing the absentee voting process for Kentucky residents who are military personnel serving on active duty outside the United States and other Kentucky residents living outside of the United States.

(3) Minimum or uniform standards contained in the federal mandate: This administrative regulation implements procedures for Kentucky counties to follow to participate in the Department of Defense Federal Voting Assistance Program server to expedite the absentee voting process for military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States, using existing online technology. This is a federal initiative under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff-1.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements or additional or different responsibilities or requirements than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

### PERSONNEL CABINET (Amendment)

#### 101 KAR 2:066. Certification and selection of eligibles for appointment.

RELATES TO: KRS 18A.030(2), 18A.110(1)(b), (7), 18A.150.18A.165

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(b), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(b) and (7) requires the Secretary of Personnel to promulgate administrative regulations which govern the establishment of eligibility lists for appointment, and for consideration for appointment of persons whose scores are included in the five (5) highest scores on the examination. This administrative regulation establishes the requirements for certification and selection of eligibles for appointment.

Section 1. Request for Certification of Eligibles. To fill a vacant position in the classified service that is not filled by lateral transfer, reinstatement, reversion or demotion, the appointing authority shall submit a request for a register to the secretary. The request shall:

(1) Be for one (1) or more positions in the same:

(a) Class; or

(b) County;

(2) Indicate:

(a) The number and identity of the positions to be filled;

(b) The title of the job classification for each position; and

(c) Other pertinent information which the appointing authority and the secretary deem necessary; and

(3) Be made by the appointing authority as far in advance as possible of the date the position is to be filled.

Section 2. Certification of Eligible Applicants. (1) Upon receipt of a request for a register, the secretary shall certify and submit to the appointing authority the names of eligible applicants for the position who have applied.

(a) If one (1) position is involved, the secretary shall certify the names of:

1. Each applicant who:

(a) Applied for the vacant position; and

(b) If it is a tested position, has a score in the highest five (5) scores earned through the selection method; and

2. All internal mobility candidates who are eligible and have applied for the vacant position.

(b) If more than one (1) vacancy is involved, the secretary may certify sufficient additional names for the agency's consideration in filling the total number of vacancies.

(c) Each appointment shall be made from:

1. The internal mobility candidate listing of eligible applicants who have applied for the vacant position; or

2. The eligible applicants with the five (5) highest scores who have applied for the vacant position, if applicable.

~~[(b) The eligibles with the five (5) highest scores who have applied for the vacant position, if applicable.]~~

(2) The life of a certificate during which action may be taken shall be ninety (90) days from the date of issue unless otherwise specified on the certificate. An appointment made from the certificate during that time shall not be subject to a change in the condition of the register taking place during that period.

Section 3. Veterans' Preference. (1) Upon request of a register, the secretary shall identify on the register certificate and submit to the appointing authority the names of eligible applicants, including internal mobility candidates, who have applied for the position and are entitled to Veterans' Preference.

(2) The employing cabinet or agency shall offer an interview to at least five (5) of the individuals identified on the register certificate who qualify for Veterans' Preference.

(3) If there are fewer than five (5) individuals identified on the register certificate who qualify for Veterans' Preference, the employing cabinet or agency shall offer an interview to all individuals identified on the register certificate who qualify for Veterans' Preference.

(4) If an individual entitled to Veterans' Preference has been interviewed for a job vacancy in the same classification, the same work county, and by the same employing agency within the preceding six (6) months, the agency is not required to offer that individual an interview.

(5) The following individuals will qualify for Veterans' Preference, once appropriate documentation is submitted and approved by the secretary:

(a) Any person who has served in the active military, military reserves, or National Guard and was discharged or released with an Honorable Discharge, Discharge Under Honorable Conditions, or a General Discharge;

(b) Any current member of the active military, military reserves, or National Guard;

(c) The spouse of a veteran who served in the active military, military reserves, or National Guard if:

1. The veteran was discharged or released with an Honorable Discharge, Discharge Under Honorable Conditions, or a General Discharge; and

2. The veteran has a service-connected disability which disqualifies him/her from performing the duties of a position in the veteran's usual occupation at the time the spouse's application is filed;

(d) A parent totally or partially dependent on a person who has served in the active military, military reserves, or National Guard and who:

1. Lost his or her life under honorable conditions while on active duty or active duty for training purposes; or

2. Became permanently and totally disabled as a result of a disability sustained during such service; and

(e) The surviving spouse of a person who has served in the active military, military reserves, or National Guard who was discharged or released with an Honorable Discharge, Discharge Under Honorable Conditions, or a General Discharge.

1. The surviving spouse is entitled to Veterans' Preference until the date of remarriage.

2. The surviving spouse is not entitled to Veterans' Preference if circumstances surrounding the death of the veteran would have been cause for an Other Than Honorable Discharge.

Section 4. Preferred Skills Questions. (1) The secretary shall approve a list of preferred skills questions to assist in the determination of an applicant's qualifications and availability for a job vacancy.

(2) The appointing authority may identify preferred skills questions from the approved list of questions which relate to the specific job classification. The appointing authority may request that an applicant answer those preferred skills questions when submitting an Application for Employment. After an appointing authority has received a register, the appointing authority may consider the answers to the preferred skills questions to assist in applicant selection.

tion.

Section 5.[4.] Selection. The appointing authority shall report to the secretary the recommended candidate for appointment.

NIKKI JACKSON, Secretary

APPROVED BY AGENCY: July 18, 2008

FILED WITH LRC: July 18, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, September 23, 2008 at 10 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Daniel F. Egbers, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Daniel F. Egbers

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the requirements for certification and selection of eligibles for appointment.

(b) The necessity of this administrative regulation: This regulation is necessary for the effective and proper certification and selection of eligible applicants for appointment to state positions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.030 allows the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 13A and 18A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation currently establishes the requirements for certification and selection of eligibles for appointment.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment implements and codifies the system of Veterans' Preference in state hiring. The amendment is necessary to reward veterans and certain family members for hardship endured and to recognize the economic loss suffered while serving our Nation in uniform.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary, as there currently is no system in place which provides for Veterans' Preference in state hiring. The practice of providing veterans an additional opportunity to be interviewed and considered for state employment should be promoted and adhered to by all agencies. This amendment must be codified to comply with the spirit of KRS 18A.150, which is the statutorily mandated system of preferring veterans by awarding additional points in pre-employment tests. However, with the elimination of tests as criteria for selection, this regulation is necessary to comply with the spirit and goal of KRS 18A.150.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 18A.030(2), 18A110.(1)(b) and (7). In addition, it conforms with KRS 18A.150, which is the statutory authority currently in place for implementation of a system of Veterans' Preference.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide the guidelines by

which the Personnel Cabinet shall clearly identify and supply to employing agencies and cabinets the individuals who are entitled to receive Veterans' Preference, as well as codify the process by which Veterans' Preference will be implemented in state hiring. This clarifies the process by which KRS 18A.150 will be effectuated.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Veteran applicants for state employment, the Personnel Cabinet and all Executive Branch agencies are affected by this amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Veteran applicants are required to submit documentation which verifies their veteran status. The Personnel Cabinet is responsible for notifying the appointing authority of an individual who is entitled to Veterans' Preference, and shall indicate this qualification on the register certificate. Employing agencies are required to then offer an interview to a set number of individuals who are entitled to receive Veterans' Preference.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to each of the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It is proper and fitting that the Commonwealth of Kentucky assist those who forfeited their career opportunities and suffered economic loss while providing military service. Kentucky will be encouraging the practice of hiring veterans and employing veterans in the state workforce, which is beneficial for the Commonwealth as well as the individual veterans.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs. However, if any costs are associated with this amendment, the costs will be born by the Personnel Cabinet.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation, as amended, is not anticipated to generate any new or additional fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? Tiering does not apply because all classes are treated the same under this regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with employees covered under KRS Chapter 18A.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030 (2), 18A.110 (1)(b) and (7), and 18A.150.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the Veterans' Preference program.

(d) How much will it cost to administer this program for subsequent years? There is no estimated cost in the administration of the Veterans Preference program.

#### GENERAL GOVERNMENT CABINET Kentucky State Board of Accountancy (Amendment)

#### 201 KAR 1:160. Peer reviews.

RELATES TO: KRS 325.301(8)[(6)]

STATUTORY AUTHORITY: KRS 325.240(2), 325.301(8)[(6)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.301(8) requires a firm that performs an audit, review, or compilation to enroll in and complete an approved peer review program. ~~[(6) establishes certified public accounting firm review standards.]~~ This administrative regulation establishes the standards and procedures that a CPA firm must follow to comply with the requirements of KRS 325.301(8) [obtain a peer review].

Section 1. Definition [Definitions]. "Sponsoring organization" means an entity administering [operating] a peer review program whose standards of review are equivalent to or better than the "Standards for Performing and Reporting on Peer Reviews" of the American Institute of Certified Public Accountants.

Section 2. (1)(a) When a firm applies to receive an initial license it shall advise the board if it performs audits, reviews, or compilations. A firm that indicates it is going to perform one of these services shall submit with its license application:

1. Proof from a sponsoring organization that it is currently enrolled in a peer review program; and

2. A copy of the firm's most recent peer review report that was received by the firm within three (3) years prior to submitting the application. If the firm has not received a peer review report within the three (3) year time period it shall notify the board of that fact.

(b) Failure to submit proof of enrollment and, if applicable, a copy of the peer review report shall result in the:

1. Application being ineligible for consideration until proof of enrollment and, if applicable, the peer review report is received by the board; and

2. The firm being prohibited from providing any audit, review or compilation services.

(c)1. A firm that is applying for an initial license that received an adverse, fail, second successive modified or second successive pass with deficiencies report within three (3) years prior to submitting the application shall also submit with its license application a copy of:

a. The firm's written response to any of the reports listed in (c)1 that was sent to the sponsoring organization; and

b. A letter from the firm that describes the current status of deficiencies that comprised the basis for any of the reports listed in (c)1.

2. The board shall review and consider any of the reports listed in (c)1 the firm's response, and the letter submitted by the firm to determine if the firm shall be issued a license.

3. If the board decides to issue a license it may impose restrictions on the firm after taking into consideration the reported deficiencies and any remedial action since the issuance of any of the reports listed in (c)1.

Section 3. (1)(a) On or after the effective date of this adminis-

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trative regulation staff of the board shall review the board records and determine if a firm with a current license is required to be enrolled in a peer review program. If staff determines the firm shall be or is currently enrolled in a peer review program a letter shall be sent to the firm manager advising him or her to submit to the board a copy of its most recent peer review report and letter of acceptance within thirty (30) days from receipt of the letter. Failure to submit a copy of its most recent peer review report and letter of acceptance may result in the board initiating disciplinary action against the firm's license.

(b) Staff of the board shall review every peer review report and acceptance letter when they are received in the board office. A report characterized as unmodified, pass, or as modified or pass with deficiencies neither of which is the second successive report shall be discarded according to the board's record retention schedule. An adverse, fail, or a second successive modified or pass with deficiencies peer review report and the firm's responses to the report shall be presented to the board for review and determination of any action to be taken against the firm after taking into consideration:

1. The deficiencies described in the report;
2. The firm's written response to the report that was sent to the sponsoring organization;
3. A letter from the firm that describes the current status of deficiencies that comprised the basis for the report; and
4. Any remedial action instituted by the firm since the issuance of the report.

Section 4. (1) Upon completion of the process prescribed in Section 3 of this administrative regulation, when in the future a firm receives a peer review report, the firm shall provide the board with a copy of the report within fifteen (15) business days of receiving the report.

(2) If the report is classified as pass, unmodified, or either pass with deficiencies or modified but neither is a second successive report no further action on the part of the firm or the board is required. Board staff shall dispose of the documents according to its retention schedule.

(3) If the report is classified as adverse, fail, or is a second successive report classified as pass with deficiencies or modified the firm shall submit the acceptance letter for any of the reports from the sponsoring organization to the board for review and determination of any action to be taken against the firm after taking into consideration:

- (a) The deficiencies described in the report;
- (b) The firm's written response to the report that was sent to the sponsoring organization;
- (c) A letter from the firm that describes the current status of deficiencies that comprised the basis for the report; and
- (d) Any remedial action instituted by the firm since the issuance of the report.

Section 5. If a firm is granted an extension of time to complete the peer review process, the firm shall immediately submit to the board a copy of a letter from the sponsoring organization that granted the extension.

Section 6. (1) A sponsoring organization shall report to the board on a quarterly basis the name of every firm enrolled in the peer review program and the name of every firm dropped or terminated from the program since the last quarterly report was provided by the sponsoring organization.

(2) A sponsoring organization shall bear the costs of verifying that it is operating the program in compliance with the standards for performing peer reviews.

Section 7. [The board shall review its records to determine if a firm that performs audits, reviews or compilations has submitted proof that it is enrolled and has completed a peer review program administered by a sponsoring organization.

(b) If proof has not been submitted, a letter shall be issued to the firm advising it that it shall enroll in a peer review program operated by a sponsoring organization within forty-five (45) days of the date of the letter.

(2) Within twenty-four (24) months of the date of enrollment in a peer review program conducted by a sponsoring organization, the firm shall submit to the board:

- (a) A letter from the sponsoring organization indicating satisfactory completion of a peer review; or
- (b) The peer review report.

(3)(a) A sponsoring organization shall report to the board on a semiannual basis the names of the firms enrolled in the peer review program.

(b) A sponsoring organization shall bear the costs of verifying compliance with the standards for performing peer reviews.

Section 3. If a firm is not enrolled in an approved peer review program when it enters into an agreement to engage in performing [perform] an audit, review or compilation, it shall not continue to [begin] work on the engagement until it has:

- (1) Enrolled in an approved peer review program; and
- (2) Submitted to the board a letter of enrollment in an approved peer review program from a sponsoring organization.

Section 8. (1) Documents Available on Web Site. In lieu of submitting a copy of a peer review report and all accompanying documents, a firm manager may notify the board staff that the documents requested are available for viewing and downloading at a specific website.

(2) Board staff may then attempt to obtain a copy of the required documents from the referenced website.

(3) If staff is not able to download a copy of the requested documents the firm manager shall submit the required copy to the board staff.

Section 9. Exclusion from Peer Review. The following report or procedure shall be excluded from the peer review process:

(1) A proposal or other communication that describes the work proposed by a firm or its employees that is a prerequisite to deciding whether to perform an audit, review or compilation of financial statements; or

(2) A letter of engagement or other information prepared by a firm in accordance with the Statements on Standards for Accounting and Review Services (SSARS) No.8 which solely involves preparing compiled financial statements for management use only as described in SSARS 8.

Section 10. [4-] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standards for Performing and Reporting on Peer Reviews," January 1, 2005; and

(b) "Statements on Standards for Accounting and Review Services No.8", December 31, 2000[June 1, 1999" is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the office of the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m. These standards are also located on a website maintained by the American Institute of Certified Public Accountants at [www.aicpa.org](http://www.aicpa.org).

REBECCA PHILLIPS, CPA, President

APPROVED BY AGENCY: August 14, 2008

FILED WITH LRC: August 15, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2008 at 10 a.m., EST at the administrative offices of the Board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by, five work days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written

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comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard Carroll

(1) Provide a brief summary of:

(a) What this administrative regulation does: It describes the procedures a public accounting firm that performs audits, reviews or compilations must follow to enroll in and submit a copy of a report the firm receives from a peer review provider to the Board of Accountancy.

(b) The necessity of this administrative regulation: KRS 325.301(8) requires all public accounting firms that perform an audit, review or compilation to complete an approved peer review program. This regulation establishes the procedures for a firm to follow in regard to submitting information to the board of their participation in a program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 325.301(8) authorizes the board to insure a firm enrolls and completes the proper type of peer review program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation currently provides guidance as to the standards that a peer review provider must follow to be considered an approved provider and what material a firm is to send to the board following completion of the peer review process.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will require firms to submit a copy of the peer review report they receive and other documentation for the board members to review to determine if the firm is complying with the peer review standards. Previously the board did not receive this amount of information.

(b) The necessity of the amendment to this administrative regulation: This amendment will allow the board to be better informed as to the status of every public accounting firm in the peer review program and if the firm is complying with the requirements of that program.

(c) How the amendment conforms to the content of the authorizing statutes: The statute allows the board to develop standards to insure firms comply with the peer review program.

(d) How the amendment will assist in the effective administration of the statutes: It will allow the board to be better informed as to the status of a firm in the peer review program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will only affect public accounting firms that issue audits reviews or compilation. It is estimated this will affect 878 firms.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The firms will submit a copy of the peer review report to the board which they did not have to previously. Firms that receive the lowest ranking and two consecutive second lowest rankings will be required to submit more documentation to the board. The board will then review this documentation to determine if any further action needs to be taken against the firm.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Only those firms that perform audits, reviews or compilations will be required to comply with this new requirement. All firms will have to submit a copy of their most recent peer review report which they receive every three years. Only the firms that received the lowest and second lowest ratings con-

secutively will be required to submit additional documentation to the board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of mailing the documents to the board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The protection of the public will be increased since reports on firms will be reviewed by the Board members to decide if firms with low ratings should still be able to provide an audit, review or compilation to the public.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Nothing

(b) On a continuing basis: Nothing

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new funding is required. The board operates solely on its trust and agency account.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No

(9) TIERING: Is tiering applied? Tiering is not applied since all CPA firms who perform audits, reviews or compilations will be required to comply with these requirements.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### GENERAL GOVERNMENT CABINET Kentucky Real Estate Appraisers Board (Amendment)

**201 KAR 30:030. Types of appraisers required in federally-related transactions; certification and licensure.**

RELATES TO: KRS 324A.010, 324A.030, 324A.035(1), (3), 324A.052

STATUTORY AUTHORITY: KRS 324A.035(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3331 through 3351). KRS 324A.035(1) and (3) require



the board to promulgate administrative regulations for certification and licensure of appraisers of real property in federally-related transactions. This administrative regulation establishes the: types of appraisers required in federally related transactions, scope of the practice, and general requirements for certification or licensure.

Section 1. Types of Appraisers. An appraiser for a federally related transaction shall be a:

- (1) Certified general real property appraiser;
- (2) Certified residential real property appraiser;
- (3) Licensed real property appraiser; or
- (4) Associate real property appraiser.

Section 2. Scope of Practice. (1) Certified general real property appraiser. A certified general real property appraiser may perform appraisals of all types of real property regardless of transaction complexity or value.

(2) Certified residential real property appraiser. A certified residential real property appraiser may perform residential appraisals of one (1) to four (4) units, regardless of transaction complexity or value, ~~and nonresidential real property with a transaction value less than \$250,000~~.

(3) Licensed real property appraiser. A licensed real property appraiser may perform appraisals of:

(a) Noncomplex, one (1) to four (4) residential units with a transaction value less than \$1,000,000;

(b) Complex, one (1) to (4) residential units with a transaction value less than \$250,000; ~~and~~

~~(c) Nonresidential real property with a transaction value less than \$250,000~~.

(4)(a) Associate. An associate real property appraiser:

1. May perform an appraisal of property that the supervising appraiser of the associate is permitted to appraise; and

2. Shall be subject to the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040.

(b) A separate appraisal log shall be maintained for each supervising appraiser.

(c) The associate shall record in the log for each appraisal the following:

1. Type of property;
2. Client name and address;
3. Address of appraised property;
4. Description of work performed;
5. Number of hours worked; and
6. Signature and state license or certification number of the supervising appraiser.

(d) The associate shall be entitled to obtain copies of the appraisal reports he or she prepared. The supervising appraiser shall keep copies of appraisal reports for a period of at least five (5) years or at least two (2) years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last.

(e) The supervising appraiser shall:

1. Have been licensed or certified by the board for a period of one (1) year;

2. Be in good standing with the board; ~~and~~

3. Be responsible for the training and supervision of the associate;

4. Effective January 1, 2009, only a Certified Residential Real Property Appraiser or a Certified General Property Appraiser who has been certified by the board for a period of one (1) year is eligible to be a supervising appraiser; and

5. Effective January 1, 2009, only a Certified General Real Property Appraiser shall provide supervision for a person acquiring experience toward a Certified General Real Property Appraiser certificate.

(f) The supervising appraiser shall:

1. Accept responsibility for an associate's appraisal report by signing and certifying that the report is in compliance with the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040;

2. Review reports by the associate;

3. Personally inspect each appraised property and the comparable sales with the associate on the associate's first fifty (50) real

property appraisal assignments, to insure that the associate is competent and is acting in accordance with the competency provision of the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040, for the property type;

4. Allow an associate who has completed the fifty (50) appraisal assignments required by subparagraph 3 of this paragraph to inspect properties located within fifty (50) miles of the supervisor's office without being accompanied by the supervisor, if the supervisor has determined that the associate is competent to perform an appraisal;

5. For the twelve (12) months following the date of issuance of an associate license, accompany the associate and inspect each appraised property and the comparable sales on each appraisal assignment located more than fifty (50) miles from the supervisor's office;

6. Be limited to a maximum of three (3) real property associates at a time; and

7. Notify the board immediately when the supervision of a real property associate has terminated.

8. Not be employed by an associate or by a company, firm, or partnership in which the associate has a controlling interest.

(g) A person otherwise qualified for supervising appraiser who has been disciplined by the board under KRS 324A.050 shall be subject to one (1) or more of the following, according to the severity of the prior violation:

1. Prohibited from supervising associates;

2. Limited to the number of associates to supervise; or

3. Be required to take additional courses approved by the board before being permitted to supervise an associate.

(h) An associate shall submit to the board two (2) complete summary appraisal reports.

1. The first report shall be submitted to the board six (6) months following the date of issuance of the associate license. The second report shall be submitted to the board twelve (12) months following the date of issuance of the associate license.

2. If necessary to determine the competency of the associate, the board shall request additional reports from the associate.

(5)(a) A first time supervisor and a new associate shall attend the board-approved course in supervision practices within six (6) months of beginning supervision.

(b) All current supervisors and all current associates shall have completed the board-approved supervisor training course prior to July 1, 2009.

(c) To be eligible to provide supervision, a supervisor shall attend the board-approved course in supervision practices every three (3) years.

Section 3. General Requirements for Certification or Licensure. Certification or licensure, as appropriate, of the types of appraisers specified in Section 1 of this administrative regulation, shall be granted if an applicant:

(1) Has met the examination, education, experience, and fee requirements established by 201 KAR 30:050 and 060; and

(2) Applies to the board on the "Appraiser Licensure/Certification Application."

Section 4. Incorporation by Reference. (1) "Appraiser Licensure/Certification Application KREAB Form APP100 - Revised 1/02" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 2624 Research Park Drive, Suite 204, Lexington, Kentucky 40511, (859) 543-8943, Monday through Friday, 8 a.m. to 4:30 p.m.

J.W. GRABEEL, Chair

APPROVED BY AGENCY: June 24, 2008

FILED WITH LRC: August 14, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2008 at 1 p.m., at 2624 Research Park Drive, Suite 204 Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 15, 2008,

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five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 2624 Research Park Drive, Suite 204 Lexington, Kentucky 40511, phone (859) 543-8943, fax (859) 543-0028.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the types of appraisers required in federally related transactions, the scope of practice, and general requirements for certification or licensure.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the scope of practice and criteria for certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations necessary to administer the law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by setting the scope of practice and the general requirements that applicants must meet for certification.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment requires both supervisors and associates to attend a training course approved by the board on the requirements for supervised experience.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to require additional training for supervisors and associates acquiring experience and to clarify the scope of work that residential appraisers may perform.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations for experience and education.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will enable the board to ensure only appraisers that are familiar the board's requirements for experience are providing supervision.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1,300 certified and licensed appraisers.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will allow the board to educate both supervisors and trainees on the process necessary for acquiring supervised experience.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by certificate holders.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-

tion, if new, or by the change if it is an amendment: No increase in fees or funding will be required to implement the changes made by this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all associate residential real property certificate holders and supervisors providing supervision.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Appraisers Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 324A.035(1), (3), 324A.040(2), and 12 U.S.C. 3331-3351.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65.

(2) State compliance standards. This administrative regulation establishes the types of appraisers required in federally related transactions, the scope of practice, and general requirements for certification or licensure.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires compliance with the minimum criteria for certification and licensure of real estate appraisers as promulgated by the Appraisal Qualification Board of the appraisal Foundation.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

(5) Justification for imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

### GENERAL GOVERNMENT CABINET Kentucky Board of Licensure for Private Investigators (Amendment)

201 KAR 41:020. Application for licensure.

RELATES TO: KRS 329A.035, 329A.040(1)

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STATUTORY AUTHORITY: KRS 329A.035, 329A.040(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 329A.025 requires the Kentucky State Board of Licensure for Private Investigators to evaluate the qualification of candidates for licensure as private investigators and private investigating companies. KRS 329A.035 establishes application requirements for private investigators and private investigation companies. This administrative regulation establishes the application requirements and process for licensure.

Section 1. Application for Individual Private Investigator License. (1) A person who has met the qualifications established in KRS 329A.035 may submit the "Private Investigator Application and Applicant Instructions".

(2) With his application, the applicant shall submit:

(a) The initial application fee set forth in 201 KAR 41:040, which is nonrefundable;

(b) Two (2) 2 in. x 2 in. color passport-style photographs;

(c) A check or money order made payable to the "Kentucky State Treasurer" in the amount of twenty-nine (29) dollars and twenty-five (25) cents~~[thirty-four (34) dollars]~~ for the criminal background check and fingerprint fee; and

(d) Tender authorizations for release of medical, psychological, and other records pursuant to the requirements of KRS 329A.035(3)(e)-(l).

Section 2. Application for Company Private Investigator License. (1) Owners, partners, or qualifying agents of companies who have met the qualifications established in KRS 329A.035, may submit the "Private Investigator Company Application and Applicant Instructions."

(2) With the company application, the applicant shall submit:

(a) The initial application fee set forth in 201 KAR 41:040, which is nonrefundable; and

(b) A check or money order made payable to the "Kentucky State Treasurer" in the amount of twenty-nine (29) dollars and twenty-five (25) cents~~[thirty-four (34) dollars]~~ for the criminal background check and fingerprint fee.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Private Investigator Application and Applicant Instructions", 7/2008~~[08/2006]~~ edition; and

(b) "Private Investigator Company Application and Applicant Instructions", 7/2008~~[08/2006]~~ edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Private Investigators, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Chair of the Kentucky Board of Licensure for Private Investigators executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 329A.

RICK A HESSIG, Chair

APPROVED BY AGENCY: May 1, 2008

FILED WITH LRC: July 30, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2008, at 3 p.m., local time, at the Kentucky Board of Licensure for Private Investigators, 911 Leewood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written

comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Gerald Hoppmann, Director, Kentucky Board of Licensure for Private Investigators, 911 Leewood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, fax (502) 564-4818.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gerald Hoppmann

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application requirements and process for licensure.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish application requirements for private investigators and private investigation companies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute to evaluate the qualification of candidates for licensure as private investigators and private investigating companies. KRS 329A.035 establishes application requirements license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides procedures for applying for license as a private investigator or private investigator company

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will lower the fee for obtaining a required criminal history background check.

(b) The necessity of the amendment to this administrative regulation: Nonapplicable

(c) How the amendment conforms to the content of the authorizing statutes: Nonapplicable

(d) How the amendment will assist in the effective administration of the statutes: Nonapplicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 50 applicants for license as a private investigator or private investigator company

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment including: The cost for processing criminal history background checks will be lowered.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Submit the required lower fee amount for a criminal history background check.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for the criminal history background check for applicants will be reduced from \$34.00 to \$29.25.

(c) As a result of compliance, what benefits will accrue to entities identified in question (3): Lower fee for obtaining a criminal history background check.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-

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tion, if new, or by the change if it is an amendment: No increase in fees will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly establish or increase any existing fees. The fees associated with application for licensure are set forth in 201 KAR 41:020.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all applicants for license.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The fees derived by this administrative regulation are used to operate the Kentucky Board of Licensure for Private Investigators which is housed in the Division of Occupations and Professions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 329A.035, 329A.040(1)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? The administrative costs to operate the board are derived from the fees charged. No additional costs are anticipated in association with the implementation of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The answer to this question is the same as (c) above.

### GENERAL GOVERNMENT CABINET

#### Kentucky Board of Licensure for Private Investigators (Amendment)

#### 201 KAR 41:040. Fees.

RELATES TO: KRS 329A.025(2)(b), 329A.040(1)(b), 329A.045(4)

STATUTORY AUTHORITY: KRS 329A.025(2)(b), 329A.040(1)(b), 329A.045(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 329A.025(2)(b) requires the board to establish fees associated with the licensure of private investigators and private investigating companies. 329A.040(1)(b) requires the board to establish an application fee for licensure and for state criminal history background checks. KRS 329A.045(4) requires the board to establish a license renewal fee. This administrative regulation establishes the application and related fees, the licensure renewal fees and fee procedure for the licensure examination.

Section 1. Application fees for licensure as a private investigator. An applicant for licensure as a private investigator shall submit the following fees to the board:

(1) The initial application fee for licensure as a private investigator shall be ~~\$400~~[\$500]. The fee shall be submitted to the board as follows:

(a) \$100 at the time of application; and

(b) ~~\$300~~[\$400] when the application has been reviewed and approved by the board.

(2) The fee for the criminal history, background check, and fingerprinting shall be:

(a) ~~Twenty-nine (29)~~[Thirty-four (34)] dollars ~~and twenty-five~~

~~(25) cents~~; and

(b) Submitted at the time of application.

Section 2. Application Fees for Licensure as a Private Investigator Company. (1) The initial application fee for licensure as a private investigator company shall be:

(a) \$100 for a sole proprietorship; or

(b) ~~\$400~~[\$500] for a firm, association, partnership, corporation, nonprofit organization, or institution.

(2) The initial application fee shall be submitted at the time of application.

Section 3. Examination Fee. (1) The examination fee shall be the actual amount charged by the examination service for the examination pursuant to a contractual agreement with the board.

(2) The examination fee shall be paid directly to the examination service.

Section 4. Biennial Renewal License Fee. (1) The fee for renewal of a private investigator license shall be \$250.

(2) The fee for renewal of a private investigating company license shall be \$250.

Section 5. Late Renewal Fee. (1) The fee for late renewal of a private investigator license, submitted for renewal between July 1 and August 31, shall be \$250. The late renewal fee shall be in addition to the license renewal fee set forth in Section 4(1) above for a total of \$500.

(2) The fee for late renewal of a private investigating company license, submitted for renewal between July 1 and August 31, shall be \$250. The late renewal fee shall be in addition to the license renewal fee set forth in Section 4(2) above for a total of \$500.

Section 6. Reinstatement Fee. (1) The fee for reinstatement of a private investigator's license terminated pursuant to KRS 329A.045(8) shall be \$100. The reinstatement fee shall be in addition to the license renewal fee set forth in Section 4(1) above and the late renewal fee set forth in Section 5(1) above for a total of \$600.

(2) The fee for reinstatement of a private investigating company license terminated pursuant to KRS 329A.045(8) shall be \$100. The reinstatement fee shall be in addition to the license renewal fee set forth in Section 4(2) of this administrative regulation and the late renewal fee set forth in Section 5(2) of this administrative regulation above for a total of \$600.

Section 7. Inactive Status Fee. The fee for placing a license in inactive status shall be \$100. The fee for renewal of a license in inactive status shall be \$100. The fee to reactivate an inactive license shall be \$250.

Section 8. Duplicate License Fee. The fee for a duplicate license or certificate shall be twenty-five (25) dollars.

Section 9. Continuing Education Program Application Fee. The annual fee for an application for approval of a continuing education program shall be fifty (50) dollars. Said fee is applicable to all continuing education providers except those who do not require board approval pursuant to 201 KAR 41:070, Section 3(1).

This is to certify that the Chair of the Kentucky Board of Licensure for Private Investigators executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 329A.

RICK A. HESSIG, Chair

APPROVED BY AGENCY: May 1, 2008

FILED WITH LRC: July 30, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2008, at 3 p.m., local time, at the Kentucky Board

of Licensure for Private Investigators, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Gerald Hoppmann, Director, Kentucky Board of Licensure for Private Investigators, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, fax (502) 564-4818.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerald Hoppmann

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the fees for private investigators and private investigation companies.

(b) The necessity of this administrative regulation: The necessity of this regulation is to place applicants for licensure on notice of the fee structure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute to set fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation allows the board to establish the fees for applicants for licensure, and for licensure renewal thereby adding clarity to the procedures. The amendment also reduces the fee associated with licensure to comply with the statutory parameters.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment sets forth the charges for the late fees and reinstatements. The amendment also reduces the fee associated with licensure to comply with the statutory parameters. Finally, it sets fees for duplicate licenses as well.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to clarify the fees associated with licensure.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 329A.025(2)(b) requires the board to establish fees associated with the licensure of private investigators and private investigating companies. KRS 329A.040(1)(b) requires the board to establish an application fee for licensure and for state criminal history background checks. KRS 329A.045(4) requires the board to establish a license renewal fee. This administrative regulation establishes the application and related fees, the licensure renewal fees and fee procedure for the licensure examination.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will add clarity to the costs for application and renewal of licenses and reduce the number of inquiries to administrative staff.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are 309 individual licensees and eighty-eight (88) licensed companies.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amended regulation sets forth the fees associated with application and maintenance of licensure

which all applicants and licensees must pay. It addresses renewals, reinstatements and inactive status.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The application fee for individual licensure is \$100. The fingerprint fee which is forwarded to the Kentucky State Police is twenty-nine (29) dollars twenty-five (25) cents. The AOC background check fee paid to AOC is \$10. The Examination fee paid to Lasergrade is \$110. The individual licensure fee is \$300. The application fee for company licensure is \$100. The company licensure fee is \$400. The fee for licensure as a sole proprietorship is \$100 plus the fees for individual licensure. The licensure renewal fee is \$250. The late renewal fee (during the sixty (60) day grace period) is \$500. The reinstatement fee is \$600. The inactive status fee is \$100. The inactive renewal fee is \$100. The duplicate license fee is twenty-five (25) dollars. The continuing education program provider fee is fifty (50) dollars.

(c) As a result of compliance, what benefits will accrue to entities identified in question (3): The applicants and licensees will meet the necessary requirements for issuance of licensure and maintaining licensure.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary to implement this amended administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation does not directly or indirectly increase any existing fees. In fact it reduces licensure fees by \$100. It establishes the fees for renewals and reinstatements as well as duplicate licenses.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all applicants for licensure, renewal and reinstatement.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The fees derived by this administrative regulation are used to operate the Kentucky Board of Licensure for Private Investigators which is housed in the Division of Occupations and Professions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 329A.025(2)(b), 329A.040(1)(b), and 329A.045(4).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The application fee for individual licensure is \$100. The fingerprint fee which is forwarded to the Kentucky State Police is twenty-nine (29) dollars twenty-five (25) cents. The AOC background check fee paid to AOC is ten (10) dollars. The Examination fee paid to Lasergrade is \$110. The individual licensure fee is \$300. The application fee for company licensure is \$100. The company licensure fee is \$400.

The fee for licensure as a sole proprietorship is \$100 plus the fees for individual licensure. The licensure renewal fee is \$250. The late renewal fee (during the 60 day grace period) is \$500. The reinstatement fee is \$600. The inactive status fee is \$100. The inactive renewal fee is \$100. The duplicate license fee is twenty-five (25) dollars. The continuing education program provider fee is fifty (50) dollars. The Board has only been in existence for approximately three (3) years and therefore it is difficult to estimate the amount of income generated. Licenses are issued for a two year term. Currently, there are 309 individually licensed private investigators in Kentucky and eighty-eight (88) licensed companies. The board generates approximately \$35,000 from licensure fees annually.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The Board has only been in existence for approximately three (3) years and therefore it is difficult to estimate the amount of income generated. Licenses are issued for a two year term. Currently, there are 309 individually licensed private investigators in Kentucky and eighty-eight (88) licensed companies. The board generates approximately \$35,000 from licensure fees annually.

(c) How much will it cost to administer this program for the first year? The administrative costs to operate the board are derived from the fees charged. No additional costs are anticipated in association with the implementation of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The answer to this question is the same as (c) above.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Licensure for Private Investigators  
(Amendment)**

**201 KAR 41:060. Renewal and reinstatement procedures.**

RELATES TO: KRS 329A.025(3)(e), 329A.045(1)-(3), (8)

STATUTORY AUTHORITY: KRS 329A.025(2)(a), 329A.045(4), (6), (8), (11)

NECESSITY, FUNCTION AND CONFORMITY: KRS 329A.025(3)(e) states that the board may renew licenses. KRS 329A.025(2)(a) authorizes the board to implement the provisions of KRS 329A.010 to 329A.090 through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A. This administrative regulation provides directions for the biennial renewal of these licenses.

Section 1. An individual private investigator license for may be renewed upon:

(1) Payment of the biennial renewal fee set forth in 201 KAR 41:040, Section 4(1); and

(2) Submission of completed "License Renewal Form" with the following written information to the board:

(a) Documentation of completion of continuing professional education requirements during the licensure renewal period established in 201 KAR 41:070;

(b) Written confirmation that, since the license was issued or renewed, the licensee has not:

1. Been convicted of a felony;

2. Had his license disciplined and is not currently under disciplinary review in Kentucky or another state; or

3. Defaulted on the repayment obligation of financial aid programs administered by the Kentucky Higher Education Assistance Authority (KHEAA) per KRS 164.772 or on the repayment obligation of financial aid programs administered by any other state or federal agency; and

(c) Documentation of proof of continuous insurance coverage for the entire licensure period. Copies of the certificate of liability insurance shall be submitted along with the renewal application.

Section 2. A licensee convicted of a felony or disciplined in the interim period between issuance and renewal of the license, or between renewal periods, shall submit notice of conviction or discipline along with a written explanation to the board prior to license renewal.

Section 3. If payment and complete information are not received by the board on or before September 1 of the renewal year, the license shall terminate and the person shall not work as a private investigator in Kentucky.

Section 4. Company License Renewal. Private investigation companies who want to renew their licenses shall submit a completed "License Renewal Form" and comply with the provisions of KRS 329A.045(3).

Section 5. A terminated license shall be reinstated, if the applicant submits:

(1) A completed "Application for Reinstatement of License" form within five (5) years of the termination date;

(2)(a) Submit evidence of receiving twelve (12) hours of continuing education within the two (2) year period immediately preceding the date that reinstatement is requested; or

(b) Obtain six (6) hours of continuing education within the first six (6) months of reinstatement of licensure. Failure to obtain six (6) hours within six (6) months shall result in termination of licensure. This requirement is in addition to the continuing education requirements for licensure renewal set forth in 201 KAR 41:070; and

(3) Payment of renewal and reinstatement fees set forth in 201 KAR 41:040.

Section 6. A license previously revoked as a disciplinary action shall be considered for reinstatement as follows:

(1) An applicant for reinstatement shall:

(a) Submit to the board fifteen (15) days prior to the next scheduled meeting, a letter:

1. Requesting reinstatement; and

2. Specifying the manner in which the applicant for reinstatement has complied with the terms of a disciplinary order of the board, if applicable.

(b) Meet the requirements set forth in Section 5(2) of this administrative regulation;

(c) Payment of renewal and reinstatement fees set forth in 201 KAR 41:040.

(2) Upon receipt of an "Application for Reinstatement of License", the board shall:

(a) Review the request for reinstatement and the Final Order; and

(b) Affirm or deny the request; or

(c) State in writing the corrective or remedial education, training, or review required before reinstatement shall be granted.

(3) The board shall not consider a request for reinstatement submitted to the board prior to the end of a revocation period.

Section 7. An applicant whose request for reinstatement is denied may file a written request for a hearing before the board within thirty (30) days of the letter denying reinstatement. A hearing held pursuant to the provisions of this section shall be conducted in accordance with KRS Chapter 13B.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "License Renewal Form", (2008[2006] Edition); and

(b) "Application for Reinstatement of License", (2008[2006] Edition).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Licensure for Private Investigators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Chair of the Kentucky Board of Licensure for Private Investigators executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and

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following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 329A.

RICK A. HESSIG, Chair

APPROVED BY AGENCY: May 1, 2008

FILED WITH LRC: July 30, 2008 at 3 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on September 22, 2008, at 3 p.m. at the Kentucky Board of Licensure for Private Investigators, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Gerald Hoppmann, Director, Kentucky Board of Licensure of Private Investigators, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, ext. 224, fax (502) 564-4818.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses for private investigators.

(b) The necessity of this administrative regulation: The necessity of this regulation is to set forth the requirements for obtaining and providing continuing education to place all private investigators and continuing education providers on notice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 329A.025(3)(e) states that the Board may renew licenses and require continuing professional education as a condition for renewal. KRS 329A.025(2)(a) authorizes the Board to implement the provisions of KRS 329A.010 to 329A.090 through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A. This administrative regulation establishes the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the continuing education requirements for licensees, thereby adding clarity to the procedures for both obtaining continuing education and renewing their licenses.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, there are 309 individual licensees and 88 licensed companies.

(4) Provide an analysis of how entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulation will assist individual licensees by clarifying the continuing education requirements which are necessary to renew their licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to the licensees to implement this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will be able to list appropriate continuing education hours.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly increase any existing fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all licensees.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Private Investigators is housed in the Division of Occupations and Professions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 329A.025(3)(e), 329A.045(11), and 329A.025(2)(a)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate some revenue in the form of fees from continuing education providers, but it does not go into effect until 2008, so it is impossible to estimate at this time.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The answer to this question is the same as (a) above.

(c) How much will it cost to administer this program for the first year? The administrative costs to operate the board are derived from the fees charged. No additional costs are anticipated in association with the implementation of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The answer to this question is the same as (c) above.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET**  
**Kentucky Board of Licensure for Private Investigators**  
**(Amendment)**

**201 KAR 41:070. Continuing professional education requirements.**

RELATES TO: KRS 329A.025(3)(e), KRS 329A.045(11)

STATUTORY AUTHORITY: KRS 329A.025(2)(a), 329A.045(11)

NECESSITY, FUNCTION AND CONFORMITY: KRS 329A.025(3)(e) states that the board may renew licenses and require continuing professional education as a condition for renewal. KRS 329A.025(2)(a) authorizes the board to implement the provisions of KRS 329A.010 to 329A.090 through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A. This administrative regulation establishes the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. (1) "Approved" means recognized by the Kentucky Board of Licensure for Private Investigators.

(2) "Continuing education hour" means fifty (50) clock minutes of participating in a continuing professional education experience.

(3) "Program" means an organized learning experience:

- (a) Planned and evaluated to meet behavioral objectives; and
- (b) Presented in one (1) session or in a series.

(4) "Provider" means an organization approved by the Kentucky Board of Licensure for Private Investigators for providing continuing professional education programs.

Section 2. Accrual of Continuing Education Hours; Computation of Accrual. (1) A minimum of twelve (12) continuing education hours shall be accrued by each person holding licensure during the two (2) year licensure period for renewal. ~~[Six (6) hours shall be acquired each year of the licensure period.]~~

(2) All hours shall be in or related to the field of private investigation.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of a licensed private investigator. They may be earned by completing any of the following educational activities:

(1) Programs not requiring board review and approval. A program provided or approved or sponsored by any of the following providers, ~~[who submit prior application to the board]~~, shall be deemed to be relevant to the practice of private investigation and shall be approved without further review by the board:

- (a) Kentucky ~~Professional~~ [Private] Investigators Association (KPIA);
- (b) Kentucky Society of Professional Investigators (KSPI);
- (c) Association of Certified Fraud Examiners;
- (d) Association One;
- (e) National Fire/Arson Certification Associations; ~~[and]~~
- (f) State and local bar associations; ~~[and]~~ ~~[-]~~
- (g) Continuing education programs approved by other state licensure boards.

(2) A general education course, or elective~~[er]~~ designated to meet undergraduate or postgraduate degree requirements, shall be acceptable for continuing education credit if the board determines it to be relevant. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equaling twelve (12) continuing education hours.

(3) Programs requiring board review and approval. A program from any of the following sources shall be reviewed by the board and determined whether it complies with the requirements of Section 4(2) of this administrative regulation:

(a) A program, including a home study course and in-service training provided by an organization or education institution not listed in subsection (1) of this section;

(b) A program or academic course presented by the licensee. A presenter of a relevant program or academic course shall earn two (2) continuing education hours for each contact hour of instruction.

Credit shall not be issued for repeated instruction of the same course;

(c) A relevant publication in a professionally recognized or juried publication. Continuing education hours shall be granted for relevant publications subject to review and approval by the board ~~[as follows]~~:

- 1. ~~Five (5) continuing education hours for each published abstract or book review;~~
- 2. ~~Ten (10) continuing education hours for each published article;~~
- 3. ~~Twenty (20) continuing education hours for each book chapter or monograph; and~~
- 4. ~~Forty (40) continuing education hours for each published book.~~

Section 4. Procedures for Preapproval of Continuing Education ~~[Sponsors and]~~ Programs. (1) A continuing education provider ~~[An applicant]~~ seeking to obtain approval of a continuing education program prior to its offering shall apply to the board at least sixty (60) days in advance of the commencement of the program, and shall provide the information required in Section 5 of this administrative regulation. An approved program fee shall be paid as set forth in 201 KAR 31:040, Section 9.

(2) A continuing education activity shall be qualified for approval if the board determines the activity:

- (a) Is an organized program of learning;
- (b) Pertains to subject matter relating to private investigation;
- (c) Enhances the professional competence of the licensee by:
  - 1. Refreshing his knowledge and skills; or
  - 2. Educating on a new topic or subject; and
- (d) Is conducted by a competent instructor, as documented by appropriate academic training, professional licensures or certification, or professionally-recognized experience.

Section 5. Procedures for Approval of Continuing Education Programs. (1) A course that has not been preapproved by the board may be used for continuing education if approval is secured from the board by the continuing education provider.

(2) The following information shall be submitted for board review of a program:

- (a) A published course or seminar description;
- (b) The name and qualifications of the instructor;
- (c) A copy of the program agenda indicating hours of education, coffee and lunch breaks;
- (d) Number of continuing education hours requested;
- (e) Official certificate of completion or college transcript from the sponsoring agency or college;
- (f) Application for continuing education credits approval; and
- (g) Approval will be for one (1) year from date of approval ~~[unless substantial course changes occur. For purposes of this section, substantial changes means a change in the curriculum in excess of twenty (20) percent].~~

Section 6. Responsibilities and Reporting Requirements of Licensees. (1) During the licensure ~~[certification]~~ renewal period, the board shall require up to fifteen (15) percent of all licensees to furnish documentation of the completion of the appropriate number of continuing education hours. All copies of documentation submitted to the board shall be returned to the licensee upon completion of the audit process via regular U.S. mail, first class, postage prepaid. Verification of continuing education hours shall not otherwise be reported to the board.

(2) A licensee shall:

- (a) Be responsible for obtaining required continuing education hours;
- (b) Identify his continuing education needs and seek activities that meets those needs;
- (c) Seek ways to integrate new knowledge, skills, and activities;
- (d) Select approved activities by which to earn continuing education hours;
- (e) Submit to the board, if applicable, a request for approval for continuing education activities not approved as required in Section 3(2) of this administrative regulation;



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(f) Document attendance, participation in, and successful completion of continuing education activity; and

(g) Maintain records of continuing education hours for five (5) years from the date of the offering of the continuing education activity.

(h) A licensee may submit information from a continuing education course that has not been pre-approved by providing the information specified in subsection (2) of this administrative regulation above to the board for review.

(3) The following items may be used to document continuing education activity:

(a) Transcript;

(b) Certificate;

(c) Affidavit signed by the instructor;

(d) Receipt for the fee paid to the sponsor; or

(e) Written summary of experiences that are not formally or officially documented otherwise.

~~(4) [Comply with the provisions of this administrative regulation.]~~ Failure to comply with the provisions of this administrative regulation shall constitute a violation of KRS Chapter 329A and shall result in:

(a) Refusal to renew licensure;

(b) Suspension of licensure; or

(c) Revocation of licensure.

Section 7. Carry-over of Continuing Education Hours Prohibited. Continuing education hours earned in excess of those required under Section 2 of this administrative regulation shall not be carried over into the immediately following licensure renewal period.

~~Section 8.[Board to Approve Continuing Education Hours:]~~ Appeal of Denial of Continuing Education Hours. (1) If an application for approval of continuing education hours is denied, the licensee shall have the right to appeal the board's decision.

(2) An appeal shall be:

(a) In writing;

(b) Received by the board within thirty (30) days after the date of the decision denying approval of continuing education hours; and

(c) Conducted in accordance with KRS Chapter 13B.

Section 9. Waiver or Extensions of Continuing Education. (1) On application, the board may grant a waiver or extension of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

(a) Medical disability of the licensee;

(b) Illness of the licensee or an immediate family member;

(c) Death or serious injury of an immediate family member; or

(d) Active military duty.

(2) A written request for waiver or extension of time involving medical disability or illness shall be:

(a) Submitted by the licensee; and

(b) Accompanied by a verifying document signed by a licensed physician.

(3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee shall reapply for the waiver or extension.

Section 10. Continuing Education Requirements for Reinstatement or Reactivation of Licensure. (1) A person requesting reinstatement or reactivation of licensure shall submit:

~~(a) Submit~~ evidence of receiving twelve (12) hours of continuing education within the two (2) year period immediately preceding the date that reinstatement or reactivation is requested;~~or~~

~~(b) Obtain six (6) hours of continuing education within the first six (6) months of reinstatement of licensure. Failure to obtain six (6) hours within six (6) months shall result in termination of licensure. This requirement is in addition to the continuing education requirements for licensure renewal set forth in Section 2 of this administrative regulation above.]~~

(2) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.

Section 11. The requirements of this administrative regulation shall go into effect for the 2008 licensure renewal cycle. All private investigators licensed by December 2006 shall be required to provide proof of continuing education for the 2008 renewal cycle. Proof of continuing education shall be required for all licensure cycles beginning in 2008.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Approval for Providers to Offer Continuing Education", (2008[2006] Edition); and

(b) "Licensee Application for Approval of Continuing Education", (2008[2006] Edition).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Private Investigators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Chair of the Kentucky Board of Licensure for Private Investigators executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 329A.

RICK A. HESSIG, Chair

APPROVED BY AGENCY: May 1, 2008

FILED WITH LRC: July 30, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2008, at 3 p.m. at the Kentucky Board of Licensure for Private Investigators, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Gerald Hoppmann, Director, Kentucky Board of Licensure of Private Investigators, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, ext. 224; fax (502) 564-4818.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gerald Hoppmann, Director

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses for private investigators.

(b) The necessity of this administrative regulation: The necessity of this regulation is to set forth the requirements for obtaining and providing continuing education to place all private investigators and continuing education providers on notice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 329A.025(3)(e) states that the Board may renew licenses and require continuing professional education as a condition for renewal. KRS 329A.025(2)(a) authorizes the Board to implement the provisions of KRS 329A.010 to

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329A.090 through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A. This administrative regulation establishes the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the continuing education requirements for licensees, thereby adding clarity to the procedures for both obtaining continuing education and renewing their licenses.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, there are 309 individual licensees and 88 licensed companies.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulation will assist individual licensees by clarifying the continuing education requirements which are necessary to renew their licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to licensees in order to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to entities identified in question (3): Licensees will be able to submit a form to list continuing education hours.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly increase any existing fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all licensees.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Private Investigators is housed in the Division of Occupations and Professions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. 329A.025(3)(e), KRS 329A.045(11), and 329A.025(2)(a).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate some revenue in the form of fees from continuing education providers, but it does not go into effect until 2008, so it is impossible to estimate at this time.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The answer to this question is the same as (a) above.

(c) How much will it cost to administer this program for the first year? The administrative costs to operate the board are derived from the fees charged. No additional costs are anticipated in association with the implementation of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The answer to this question is the same as (c) above.

**JUSTICE AND PUBLIC SAFETY CABINET  
Office of the Secretary  
(Amendment)**

**500 KAR 3:010. Definitions.**

RELATES TO: KRS 61.360

STATUTORY AUTHORITY: KRS 13A.100, 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation defines terms used in 500 KAR Chapter 3 which pertain to the administration of "The Special Local Peace Officer Act" by the Governor or his designee.

Section 1. Definitions. The following definitions shall apply in this chapter:

(1) ~~"Secretary" shall mean the Secretary of the Justice Cabinet.~~

(2) ~~"Cabinet" means~~[shall mean] the Justice and Public Safety Cabinet.

(2) ~~[(3)]~~ "Commission" shall mean a commission issued to an individual by the Secretary of ~~the Justice and Public Safety Cabinet.~~ [Justice,] entitling him or her~~[such individual]~~ to perform special local peace officer duties on specific private property.

(3) ~~[(4)]~~ "Private property" ~~means~~[shall mean] specific real property currently owned by an individual, company or agency in the Commonwealth~~[state]~~ of Kentucky.

(4) ~~"SLPO" means Special Local Peace Officer.~~

(5) ~~"SLPO program administrator" means the administrator appointed by the Secretary of the Justice Cabinet to administer the Special Local Peace Officer Program whose address is: SLPO Program Administrator, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601.~~

(6) ~~"Special local peace officer," as set forth in KRS 61.360 means one whose duties include:~~

(a) ~~The~~[Shall mean one whose duties include the] protection of specific private property from intrusion, entry, larceny, vandalism, abuse, waste or trespass; ~~[and]~~

(b) ~~The~~ [Shall mean one whose duties include the] prevention, observation or detection of, or apprehension for, unlawful activity on specific premises; ~~[and]~~

(c) ~~The~~[Shall mean one whose special duties include the] control of the operation, parking of motor vehicles, bicycles and other vehicles, and the movement of pedestrian traffic on specific private property; and

(d) ~~The~~[Shall mean one whose duties include the] answering of any intrusion alarm on specific private property.

~~[(6)] "SLPO program administrator" means the administrator appointed by the Secretary of the Justice Cabinet to administer the Special Local Peace Officer Program whose address is: SLPO Program Administrator, Justice Cabinet, 417 High Street, 3rd Floor,~~

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Frankfort, Kentucky 40601.]

VICKIE WISE, General Counsel

For J. MICHAEL BROWN, Secretary

APPROVED BY AGENCY: August 14, 2008

FILED WITH LRC: August 14, 2008 at 2 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on September 22, 2008 at 9 a.m. in First Floor Conference Room, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 15, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen D. Lynn

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the definitions for 500 KAR Chapter 3.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide definitions of terms commonly used in the Special Local Peace Officer application process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.360 establishes the office of Special Local Peace Officer and imposes certain requirements on those seeking a commission. This administrative regulation establishes the definitions for the application process in 500 KAR Chapter 3.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clearly defines the terms used in the Special Local Peace Officer application process.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment changes wording and formatting to comply with KRS Chapter 13A and adds one additional definition.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation had not been amended since 1986. The cabinet was in the process of amending 500 KAR 3:020 and decided to update this administrative regulation to comply with new requirements of KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation complies with the requirements of KRS 61.360 and Chapter 13A, by clearly establishing the definitions used in the procedure for commission as a Special Local Peace Officer.

(d) How the amendment will assist in the effective administration of the statutes: It will define the terminology commonly used in 500 KAR Chapter 3.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 39 people commissioned in the program representing 15 property owners. This numbers will vary from month to month. The agencies affected are the Justice and Public Safety Cabinet Office of Investigations, Kentucky State Police, Vital Statistics, Transportation Cabinet, and the Administrative

Offices of the Courts. The businesses affected would be all those currently in the program plus any new ones which qualify.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Office of Investigations has been designated by the Governor to review the applications for commissions and conduct the background investigations. The Kentucky State Police, Vital Statistics, Transportation Cabinet, and Administrative Office of the Courts will be contacted to review their records relating to the driving and criminal history of the applicant. The amendment to this administrative regulation should have little effect on these agencies.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation should have little effect on the costs to these agencies.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those applying for a commission as a SLPO will have the definitions for the application process.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This administrative regulation has been in effect since 1986.

(b) On a continuing basis: This cost should remain the same.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The current application fee is \$10.00 for a SLPO. The remaining costs are paid for through Justice and Public Safety Cabinet funding via the biennial budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There should be no need for an increase in fees or funding due to implementation of this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation may have a small effect state government agencies, Kentucky State Police, Vital Statistics, Transportation Cabinet, and Administrative Office of the Courts, whose services will be necessary to continue the commissioning of SLPOs.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.360 provides that no person shall be eligible for appointment as a SLPO unless he has established that he meets the qualifications to the satisfaction of the Governor. This administrative regulation is promulgated under the implied authority of that statute.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. It should have no effect on expenditures or revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? It is difficult to provide an exact dollar figure, but it is estimated at least 15 hours are spent working on each new SLPO application. This includes the investigator, the office assistant, Kentucky State Police inquiry, and legal review time, in addition to office supplies. The cost for a renewal application will be slightly lower, approximately 12 hours per application. On key point, one hour of anyone connected to the programs time will surpass the \$10 fee.

(d) How much will it cost to administer this program for subsequent years? The commissions for a SLPO are for a two year period. After the initial application, the amount of time and costs should decrease for approximately twelve (12) hours per applicant.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): Please refer to question #4 above.

Other Explanation: None

**JUSTICE AND PUBLIC SAFETY CABINET  
Office of the Secretary  
(Amendment)**

**500 KAR 3:020. Filing and processing SLPO commissions.**

RELATES TO: KRS 61.360

STATUTORY AUTHORITY: KRS. 13A.100, 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.360 authorizes the Governor or his agent to appoint Special Local Peace Officers. This administrative regulation establishes the procedure for applying for a commission as a Special Local Peace Officer [states the criteria and procedures for filing and processing applications for special local peace officer commissions.]

Section 1. Qualifications to Apply for Commission as a Special Local Peace Officer. To qualify for a commission as a SLPO [special local peace officer], an applicant [individual] shall present satisfactory evidence of compliance with the conditions and requirements set forth in KRS 61.360.

Section 2. Application for Commission as a Special Local Peace Officer. Applications from the property owner [or his authorized agent] shall be sent to the [Justice] cabinet SLPO program administrator and comply with the following requirements:

(1) An applicant [Applicants] shall meet all of the requirements of KRS 61.360 before a commission shall be granted. An applicant [Each individual] who qualifies may hold additional commissions for different property locations, [but may only be commissioned in his residential county.]

(2) The applicant shall complete two (2) notarized "SLPO Application Candidate Information (SLPO-1)" forms, which shall include the following:

(a) [applications with the necessary information as specified therein and in these administrative regulations.] The name of the property owner; [owner or his agent whose property is being protected shall be listed as indicated on the application.]

(b) The name, address, date of birth, and Social Security number of the applicant and a detailed personal description;

(c) A certified copy of the applicant's birth certificate; [certificate, along with two]

(d) Two (2) [recent] photographs of the applicant, which shall be [individual [full]]

1. Full face; [face approximately three]

2. At least three (3) inches by five (5) inches in size; [inches] and

3. Taken within [the last] thirty (30) days prior to submission of the [date the] application;

(e) A copy of the applicant's military discharge or Form DD-214, [is submitted] and the application fee shall be attached to the applications.] if the applicant is a veteran; [a copy of his military release (Form DD-214) shall also accompany the applications. The application forms shall be signed by]

(f) The signature of the property owner;

(g) A statement of all arrests and convictions including traffic offenses, violations, misdemeanors, or felonies; and

(h) The notarized signature of the applicant [or his agent].

(3) The ten (10) dollar application fee shall be:

(a) Submitted with the application form;

(b) Nonrefundable; and

(c) Submitted by [is nonrefundable and shall be in the form of a] check or money order made payable to the Kentucky State Treasurer.

(4) Submission of any false or misleading information or the [All arrests and convictions including traffic offenses, violations, misdemeanors or felonies shall be provided as requested on the application. Any false, misleading, or] withholding of information requested on the application or by the [Justice] cabinet investigator, shall be grounds for rejection without further consideration. [The applicant's affidavit shall be signed and notarized.]

(5) If not on file from a previous application, an applicant shall be fingerprinted at the AFIS Section, Kentucky State Police, 1250 Louisville Road, Frankfort, Kentucky 40601.

(6) [The applicant shall supply the necessary information to the SLPO program administrator for criminal history information record review. The applicant shall provide his name and detailed personal description.

(6) If the applicant's fingerprints are not on file with the Kentucky State Police Criminal Record Section, the SLPO program administrator shall make arrangements to have the applicant fingerprinted.

(7) The application shall also contain the Authority to Release Information Form (SLPO-6) to allow [which allows] the release of all necessary information to the SLPO program administrator. It shall be signed by the applicant and notarized or may be witnessed by a [Justice] cabinet official.

(7) The applicant shall also sign the SLPO Acknowledgment Notice Form (SLPO-7) which indicates that:

(a) He has received, read, and understands:

1. KRS 61.300;

2. KRS 61.360;

3. KRS 61.991;

4. KRS 62.010;

5. KRS 62.990; and

6. The administrative regulations in 500 KAR Chapter 3; [a copy of the SLPO Act and that he]

(b) He acknowledges that his authority is limited and restricted under the SLPO Act; and

(c) He understands and acknowledges that his commission as a SLPO [special local peace officer, Act, that it] does not give him the right or authority to carry a concealed weapon off the premises of the said property, unless he holds a license to carry a concealed deadly weapon issued pursuant to KRS 237.110.

(8) A Letter of Intent Form (SLPO-5) shall be filed with each application by the property owner [or his agent] giving the name of applicant and the specific private property to be protected. This letter shall [is to] accompany the application forms for SLPO initial application or renewals.

(9) The applicant shall arrange for an interview with the SLPO program administrator.

(10) If the application is defective or in conflict with the SLPO Act or administrative regulations, the application shall be returned to the property owner. An [or his agent. If the] application may [can] be corrected and, it may be resubmitted at no additional cost if it is resubmitted within sixty (60) days of the original submission date. [All SLPO officers shall be familiar with the provisions of the SLPO Act (KRS 61.360), the administrative regulations pursuant thereto, and the penalties imposed for violating the SLPO Act and its administrative regulations. In addition, the officers shall be familiar with KRS 61.300, 61.991(2), 62.010 and 62.990.

(11)]

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Section 3. The Grant of the Commission and the Required Oath of Office. A commission for a special local peace officer shall be validated and granted as follows:

(1) ~~If [When]~~ the applicant has successfully satisfied the requirements of the act, a commission certificate and a Special Local Peace Officer Recommendation of Background Investigator (SLPO-2) form shall ~~be~~be~~recommendation is~~ forwarded by the SLPO program administrator to the secretary for review. After the commission is issued by the secretary, a copy of the commission shall be placed in the officer's file.

(2) ~~If [When]~~ a commission is granted:

~~(a) [.]~~ The commission and the applications shall be forwarded by the ~~[Justice]~~ Cabinet to the property owner~~[or his agent whose property is to be protected]~~.

~~(b)~~ The appointed applicant shall promptly take both applications to the county clerk in the county where the applicant is to serve and shall take the constitutional oath of office within thirty (30) days after notice of appointment.

~~(c)~~ The county clerk shall then complete and sign the clerk's attestation on the applications and retain one (1) copy for filing purposes in the county clerk's office in accordance with the statute.

~~(d)~~ The applicant shall return the second application signed by the clerk to the property owner~~[or his agent]~~.

~~(e)~~ The property owner~~[or his agent]~~ shall then return the second copy of the application to the ~~[Justice]~~ cabinet SLPO program administrator for the purpose of indicating that the oath was administered and that it is filed with the county clerk.

~~(f)~~ The property owner~~[or his agent]~~ shall be allowed thirty (30) days to arrange for the appointed applicant to take the oath of office and return the application to the ~~[Justice]~~ cabinet program administrator. If the oath and application are not returned within thirty (30) days [administrator, otherwise], the commission shall be revoked in accordance with KRS 62.010 and 62.990.

~~(g)~~ The commission certificate shall be kept by the property owner~~[or his agent]~~ so long as the officer is employed or until ~~[such time that]~~ his authority is terminated by action of the property owner ~~[or his agent and/or]~~ the ~~[Justice]~~ cabinet secretary.

~~(3)~~ A SLPO Commission shall ~~be~~The SLPO Commissions are issued for a period of ~~five (5)~~two (2) years, provided that the officer continues to meet all statutory and regulatory criteria.

(4) When the SLPO officer has taken the constitutional oath of office, the property owner~~[or his agent]~~ shall issue an identification card which is to be carried by the SLPO officer whenever he is acting under the authority of KRS 61.360. The identification card shall be presented as required by any duly sworn peace officer or ~~[Justice]~~ cabinet official and is subject to control by the ~~[Justice]~~ cabinet. If for any reason a SLPO officer is terminated or otherwise relieved of his duties as a SLPO officer by the property owner ~~[or his agent]~~ or the ~~[Justice]~~ cabinet, he shall immediately return this identification card to the officer's property owner~~[or his agent]~~ who shall return the same to the SLPO program administrator.

(5) A notice shall be forwarded to the property owner~~[or his agent]~~ concerning any officer whose appointment has been suspended or revoked by the secretary. The property owner~~[or his agent]~~ shall maintain current files and make renewal applications at least ~~sixty (60)~~thirty (30) days prior to the commission's expiration date.

(6) The SLPO commission certificate shall be held by the property owner~~[or his agent]~~ and shall be available for inspection by the ~~[Justice]~~ cabinet program administrator or his designee. The commission certificate remains the property of the ~~[Justice]~~ cabinet and is to be returned upon the officer's authority being withdrawn for any reason.

Section 4. Renewals. A Letter of Intent Form (SLPO-5)~~[letter of intent]~~ from the property owner~~[or his authorized agent]~~ stating a request to renew a commission and a new set of applications for each ~~applicant [individual]~~ involved shall be filed with the ~~[Justice]~~ cabinet program administrator at least ~~sixty (60)~~thirty (30) days before the expiration date of the existing commission. The applicant for renewal shall undergo a new background investigation to bring his records up-to-date.

Section 5.~~[The Property Owner or his Agent Employing SLPO Officers.]~~ Records, Reports and Responsibility. Each property owner~~[his agent, or each agency]~~ employing SLPO officers shall keep his files current as to the expiration date on each officer's commission and as follows:

(1) The property owner~~[or his agent]~~ shall keep the individual officer's commission certificates on file, to be returned to the ~~[Justice]~~ Cabinet upon termination of the officer and/or his authority.

(2) The property owner~~[or his agent]~~ shall post a copy of these administrative regulations and a copy of KRS 61.360 and 61.990 in a conspicuous location in any office or building that is designated security headquarters for persons operating as SLPO officers.

(3) Complaints or unusual incidents involving SLPO officers shall be handled by the property owner~~[or his agent]~~ whose private property is being protected by the SLPO officer involved. However, the property owner~~[or his agent]~~ shall notify the ~~[Justice]~~ cabinet SLPO program administrator by direct verbal communication within twenty-four (24) hours of any reported incident involving any act as enumerated in KRS 61.360(1)(c) by any of its SLPO officers. A written report shall be filed with the SLPO program administrator, within thirty (30) days of the original oral report, setting forth the details of the incident and listing any action taken by the property owner~~[or his agent]~~. If formal charges are pending, the property owner~~[or his agent]~~ shall advise the SLPO program administrator as to the specific charge(s), trial dates and the final disposition of the charge(s).

(4) The property owner~~[or his agent]~~ shall mail a current list of all active SLPO personnel to the SLPO program administrator by June 30 each year.

(5) The property owner~~[or his agent]~~ shall issue each SLPO officer an identification card, encased in plastic, upon the ~~applicant's~~individual's appointment. The identification card shall be billfold size (approximately two and one-fourth (2 1/4) inches by three and one-half (3 1/2) inches) and shall include:

~~(a) [be composed as follows: contain on one (1) side]~~ A reduced copy of the officer's commission certificate (reduced by photographing or other method) on one side of the card;

~~(b) [; and, on the other side contain]~~ A full-faced photograph of the officer shall be included on the other side of the card; ~~[along with his]~~

~~(c) The name, date of birth, Social Security number and signature of the officer. [his signature. The identification card shall be encased in plastic.]~~

(6) The property owner~~[or his agent]~~ shall be responsible for obtaining the identification card from any officer terminated and remitting the same to the SLPO program administrator for destruction.

(7) If the bond required by KRS 61.360 is cancelled or revoked, the property owner shall notify the Cabinet of this fact and the reason for cancellation or revocation. This notice shall be sent in writing to the Cabinet within five (5) days. This provision shall be retroactive in application.

Section 6. Violations. ~~A[All]~~ property owner~~[owners, agents or agencies]~~ utilizing SLPO's shall be subject to inspection and investigation by the ~~[Justice]~~ cabinet as circumstances may warrant for possible violations. Violations may result in prosecution ~~and [and/or]~~ recommendation to the secretary~~[of Justice]~~ that the commission affected directly or indirectly be revoked.

Section 7. Revocation or Suspension of SLPO Commissions.

(1) If it is determined by the program administrator that KRS 61.360 of the SLPO Act applies to any active SLPO commissioned officer, the program administrator shall notify the secretary who shall revoke or suspend the commission of any special local peace officer, after an administrative hearing conducted in accordance with KRS Chapter 13B, if he determines [whenever he shall determine]:

~~(a) [(1)]~~ That the commission-holder does not meet, or no longer meets the requirements and conditions for the commission; ~~[or]~~

~~(b) [(2)]~~ That the commission-holder has knowingly falsified an application or portion thereof, or has knowingly made any false or misleading statement of a material fact to the ~~cabinet [secretary or agents or officers thereof]; or~~

(c)(3) That the commission-holder has violated any statute, rule, administrative regulation or order of the secretary, the violation of which the secretary determines to bear a reasonable relationship to eligibility for the commission.

(2) Upon revocation or suspension the SLPO program administrator shall notify the property owner[or his agent] involved to return the commission of the SLPO officer involved to the SLPO program administrator for the[Justice] cabinet. The property owner [or his agent] responsible for the SLPO officer shall forward a letter to the SLPO officer involved stating that his commission has been revoked or suspended and that he shall immediately return the SLPO identification card to the property owner[or his agent] who shall forward the card to the SLPO program administrator.

(3) The program administrator shall notify the county clerk in the officer's county of jurisdiction whenever a SLPO officer's commission has been surrendered, suspended, or revoked.

#### Section 8. Procedures for Investigating Complaints or Unusual Incidents Involving SLPO Officers.

(1) Complaints or unusual incidents involving SLPO officers shall be handled by the property owner[or his agent] whose private property is being protected by the SLPO officer involved. The property owner[or his agent] shall be responsible for notification to the [Justice]cabinet of all[any/all] incidents involving their SLPO personnel as indicated herein.

(2) The[However, the Justice] cabinet program administrator or other assigned officers may investigate any[and all] complaints or unusual incidents involving a SLPO officer[officers,] if there is reason to believe the provisions of KRS 61.360 or other applicable laws have been violated and an investigation is necessary.

(3) Any investigation conducted by the[Justice] cabinet shall become part of the official record of the SLPO officer involved.

#### Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "SLPO Application Candidate Information Form (SLPO-1)", August 14, 2008 edition;

(b) "Special Local Peace Officer Recommendation of Background Investigator Form (SLPO-2)", May 8, 2008 edition;

(c) "Letter of Intent Form (SLPO-3)", July 28, 2008 edition;

(d) "Authority to Release Information Form (SLPO-4)", July 28, 2008 edition;

(e) "SLPO Acknowledgment Notice Form (SLPO-5)", July 28, 2008 edition;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

VICKIE WISE, General Counsel

For J. MICHAEL BROWN, Secretary

APPROVED BY AGENCY: August 14, 2008

FILED WITH LRC: August 14, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2008 at 9 a.m. in the First Floor Conference Room, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 15, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102,

phone (859) 622-3073, fax (859) 622-5027.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen D. Lynn

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the filing requirements for those applying for a commission as a Special Local Peace Officer and the process by which the Cabinet will review applications.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 61.360 and to establish the application requirements for those commissioned as a Special Local Peace Officer.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.360 establishes the office of Special Local Peace Officer and imposes certain requirements on those seeking a commission. This administrative regulation establishes the application and investigation procedure to ensure that applicants meet the requirements of KRS 61.360(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets clear and reasonable application requirements for all who wish to be commissioned as a Special Local Peace Officer.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment changes wording and formatting to comply with KRS Chapter 13A and clearly establishes the application procedure, including fingerprinting and background check.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation had not been amended since 1986. Due to the changes in the procedures since that time, it was deemed necessary to bring the administrative regulation up to date.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation complies with the requirements of KRS 61.360 and Chapter 13A, by clearly establishing the procedure for commission as a Special Local Peace Officer.

(d) How the amendment will assist in the effective administration of the statutes: It will provide an updated and easy to understand procedure for all Special Local Peace Officer applicants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently thirty-nine (39) people commissioned in the program representing fifteen (15) property owners. This numbers will vary from month to month. The agencies affected are the Justice and Public Safety Cabinet Office of Investigations, Kentucky State Police, Vital Statistics, Transportation Cabinet, and the Administrative Offices of the Courts. The businesses affected would be all those currently in the program plus any new ones which qualify.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Office of Investigations has been designated by the Governor to review the applications for commissions and conduct the background investigations. The Kentucky State Police, Vital Statistics, Transportation Cabinet, and Administrative Office of the Courts will be contacted to review their records relating to the driving and criminal history of the applicant.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): In accordance with KRS 61.360, the cost to applicants is ten (10) dollars. The cost of compliance for the state agencies listed above is difficult to determine, as they are accessing records that they maintain and routinely access.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those individuals commissioned

as SLPOs will have the authority of peace officers on the private property which they protect. The state agencies listed will receive no benefit.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This administrative regulation has been in effect since 1986.

(b) On a continuing basis: This cost should remain the same.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The current application fee is ten (10) dollars, which does not cover the full cost of performing the background investigation. The remaining costs are paid for through Justice and Public Safety Cabinet funding via the biennial budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: Currently, KRS 61.360 establishes the amount \$10 that may be charged in connection with an application for SLPO commission. As a result, that amount cannot be changed in this administrative regulation. However, that amount does not cover the true costs of administering the program and the Cabinet would welcome an increase in the application fee to also cover the cost of the background investigation. Each new application requires approximately 15 hours of work. Each renewal application requires approximately 12 hours.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect state government agencies, Kentucky State Police, Vital Statistics, Transportation Cabinet, and Administrative Office of the Courts, whose services will be necessary to continue the commissioning of SLPOs.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.360 provides that no person shall be eligible for appointment as a SLPO unless he has established that he meets the qualifications to the satisfaction of the Governor.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The only effect that is expected on expenditures of the Office of Investigations is for payment of salaries for personnel to perform the required background investigations. It should have no effect on revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? It is difficult to provide an exact dollar figure, but it is estimated at least 15 hours are spent working on each new application. This includes the investigator, the office assistant, Kentucky State Police inquiry, and legal review time, in addition to office supplies. The cost for a renewal application will be slightly lower, approxi-

mately 12 hours per application. On key point, one hour of anyone connected to the programs time will surpass the \$10 fee.

(d) How much will it cost to administer this program for subsequent years? The commissions are for a five year period. After the initial application, the amount of time and costs should decrease for approximately 12 hours per applicant.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): Please refer to question #4 above.

Other Explanation: None

#### TRANSPORTATION CABINET Department of Highways Division of Traffic Operations (Amendment)

#### 603 KAR 5:320. Safety in highway work zones.

RELATES TO: KRS 189.232, 189.2325, 189.390(4)(b), 189.394(6)

STATUTORY AUTHORITY: KRS 189.2325

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.2325 requires the Transportation Cabinet to promulgate administrative regulations governing the posting of signs advising motorists that penalties are increased for traffic[speeding] violations occurring on state-maintained streets or highways in a highway work zone. KRS 189.390(4)(b) authorizes the Transportation Cabinet to temporarily reduce established speed limits in a highway work zone without an engineering or traffic investigation. This administrative regulation establishes guidelines for the posting of signs in highway work zones and addresses the maximum reduction in speed limit the Transportation Cabinet may be able to effect without an engineering or traffic investigation.

Section 1. ~~Definition.~~~~[Definitions.]~~ "Highway work zone" is defined~~[The definition of "highway work zone" shall be governed]~~ by KRS 189.232.

Section 2. Double Fine Signs. (1) At the beginning of that portion of a highway work zone where the fines for conviction of speeding are to be doubled, the Department of Highways shall place~~cause to be placed~~ a sign with the following message: "Fine Doubled in Work Zone".

(2) At the end of that portion of a highway work zone where the fines for conviction of speeding are to be doubled, the Department of Highways shall place~~cause to be placed~~ a sign with the following message: "End Double Fine".

(3) The construction or manufacture of double fine signs shall be governed by the criteria set forth in the Department of Highways document "Double Fine Signs Specifications".

(4) The signs required by subsections (1) and (2) of this section shall be removed or covered so that the required message is not visible or legible to the traveling public or a law enforcement officer when the highway work zone does not have a worker present for more than a two (2)-hour period of time.

Section 3. Placement of Double Fine Signs. (1) A highway work zone shall be eligible for placement of the double fine signs if:

(a) A worker is not routinely protected by a barrier wall; or

(b) A condition exists which exposes a worker to traffic hazards.

(2) The double fine signs shall only be placed to affect that portion of the highway work zone where a worker is exposed to traffic hazards.

(3) The double fine signs may be relocated as the project taking place in the highway work zone progresses.

(4)(a) If the highway on which the "double fine signs" are to be placed is not a divided highway, the fine shall be doubled for both directions of travel.

(b) The "double fine signs" specified in Section 2 of this admin-

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istrative regulation shall be placed facing the on-coming traffic at both ends of the work zone on a highway which is not divided.

(5) If the highway on which the "double fine signs" are to be placed is a divided highway, the fine shall be doubled only for a direction of traffic which is signed pursuant to this administrative regulation.

Section 4. State Forces. The Department of Highways engineer overseeing a construction or maintenance project which is being accomplished with state forces may place double fine signs in accordance with ~~the provisions of~~ this administrative regulation.

Section 5. Encroachment Permit Holders and Contractors for the Department. (1) An applicant for an encroachment permit pursuant to 603 KAR 5:150 or a contractor for the department who will have workers exposed to traffic hazards may request permission to place double fine signs in accordance with ~~the provisions of~~ this administrative regulation.

(2) The Department of Highways engineer who approves the encroachment permit or serves as engineer for the project shall grant or deny the request to place double fine signs at a highway work zone based on the criteria established in Section 3(1) of this administrative regulation.

(3) The Department of Highways engineer who approves an encroachment permit or oversees a construction project request for work on a highway which has hazardous conditions may require the permit holder to place double fine signs at the highway work zone.

(4) The placement of a double fine sign in a work zone shall not relieve a permit holder or contractor from his duty to have an approved traffic control plan for each work location.

(5) The double fine signs placed by the permit holder or contractor shall meet the requirements of the "Double Fine Sign Specifications".

(6) A permit holder or contractor shall notify the Transportation Cabinet of the times and locations of the placement of the double fine signs.

Section 6. Reduced Speed Limits. (1) The Department of Highways may temporarily reduce the speed limit in a highway work zone.

(2) The Department of Highways shall not reduce the speed limit in a highway work zone by more than fifteen (15) ~~ten (10)~~ miles per hour without an engineering or traffic investigation if the highway work zone is located on a section of highway with a speed limit of seventy (70) miles per hour.

(3) The Department of Highways shall not reduce the speed limit in a highway work zone by more than ten (10) miles per hour without an engineering or traffic investigation if the highway work zone is located on a section of highway with a speed limit of sixty-five (65) miles per hour or less.

(4) A temporarily reduced speed limit in a highway work zone shall be signed with a black on white regulatory sign.

~~(5) [(4)]~~ A black on orange sign recommending a speed shall be advisory.

~~(6) [(5)]~~ The Department of Highways engineer in charge of a maintenance or construction project may temporarily reduce the speed limit in a highway work zone without placing double fine signs in the zone.

Section 7. Incorporation by Reference. (1) "Double Fine Sign Specifications", (August 2007 ~~October 1996~~ Edition), Department of Highways is incorporated by reference.

(2) This material ~~it~~ may be inspected, copied, or obtained, subject to applicable copyright law, at ~~free of charge from~~ the Transportation Cabinet, Department of Highways, Division of Traffic Operations, 200 Mero Street, ~~The address is First Floor, State Office Building, 501 High Street,~~ Frankfort, Kentucky 40622, ~~Monday through Friday, 8 a.m. to 4:30 p.m.~~ ~~The telephone number is (502) 564-3020.~~

JOSEPH PRATHER, Secretary

APPROVED BY AGENCY: July 24, 2008

FILED WITH LRC: August 14, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2008 at 10 a.m. local time at the Transportation Cabinet, Transportation Cabinet Office Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five workdays prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing five (5) working days prior to the hearing or send written comments on the proposed administrative regulation by close of business September 30, 2008 to:

CONTACT PERSON: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Station: W6-21-02, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dana Fugazzi

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation governs the posting of signs advising motorists that penalties are increased for speeding violations occurring on state-maintained streets or highways in a highway work zone.

(b) The necessity of this administrative regulation: KRS 189.390(4)(b) authorizes the Transportation Cabinet to temporarily reduce established speed limits in a highway work zone without an engineering or traffic investigation. KRS 189.2325 requires the Transportation Cabinet to promulgate administrative regulations governing the posting of signs advising motorists that penalties are increased for speeding violations occurring in a highway work zone.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth guidelines for the posting of signs in highway work zones and addresses the maximum reduction in speed limit the Transportation Cabinet may be able to effect without an engineering or traffic investigation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes guidelines for the posting of signs in highway work zones.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment establishes the maximum amount the speed limit in a work zone can be reduced without an engineering or traffic investigation when the normal speed limit is sixty-five (65) miles per hour or less and also when the speed limit is seventy (70) miles per hour.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this regulation as it relates to highway work zone speed limits on some roadways due to increased normal speed limits of seventy (70) miles per hour.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to KRS 189.390, this amendment sets forth the amounts the speed limits can be reduced in highway work zones without an engineering or traffic investigation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide highway work zone speed limits for two classes of highways. Those highways with a normal speed limit of 65 miles per hour or less and those highways with a normal speed limit of 70 miles per hour.



(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all operators of motor vehicles on the public highways of Kentucky and all persons working in a highway work zone.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation establishes speed limits in highway work zones and governs the posting of signs advising motorists of increased penalties for speeding in those work zones.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no imposed expenses.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with reduced speed limits in highway work zones enhances highway safety for travelers on the highway and those working in the work zone.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No known cost.

(b) On a continuing basis: There are on-going costs related to signage and the maintenance of records within the Transportation Cabinet indicating location of all "double fine" signed areas. These amendments should not increase the current cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Road funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The Cabinet has not increased funding and does not anticipate a need for increased funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No

(9) TIERING: Is tiering applied? Yes, tiering was applied in the selection of sites to be posted for double fines. The size of the double fine signs is a variable depending on the type of highway on which it is to be used.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Transportation Cabinet, Justice and Public Safety Cabinet and local law enforcement entities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 189.2325 and 189.390(4)(b).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? There is ongoing cost related to signage. These amendments should not increase the current costs.

(d) How much will it cost to administer this program for subsequent years? There is ongoing cost related to signage. These amendments should not increase the current costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative

regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### EDUCATION CABINET Kentucky Board of Education Department of Education (Amendment)

#### 702 KAR 3:080. Fidelity[Treasurer's] bond, penal sum for treasurer, finance officer, and others.

RELATES TO: KRS 156.010, 160.560

STATUTORY AUTHORITY: KRS 156.029(7), 156.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(7) requires the Board of Education to develop policies and to promulgate administrative regulations by which the Department of Education shall be governed. KRS 156.070 authorizes the Board of Education to promulgate administrative regulations necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. KRS 160.560 requires each local board of education treasurer to be bonded in accordance with Kentucky Board of Education administrative regulations. This administrative regulation establishes a penal sum for the bond of treasurer and requires the bonding of other school employees.

Section 1. Definitions. (1) "Total current assets" means the 61XX series in the balance sheet object codes as provided in the KETS District Administrative System Chart of Accounts Descriptions incorporated by reference in 702 KAR 3:120.

(2) "Total revenue" means codes 1000-4999 in the revenue object codes as provided in the Uniform School Financial Accounting System[KETS-District-Administrative-Chart-of-Accounts] incorporated by reference in 702 KAR 3:120.

Section 2. (1) A local board of education shall require a fidelity bond from the board treasurer, the finance officer, and others holding similar positions who are responsible for district funds and who receive and expend funds on behalf of the school district.

(2) A local board of education, on the advice of the Commissioner of Education, shall determine the amount of the penal sum of the fidelity bond for all employees by July 1st of each year.

(3) The local board of education shall submit the fidelity bonds to the Commissioner of Education for approval no later than July 31st of each year. A district shall not resubmit a multiyear bond for approval in subsequent years if the bond amount is still adequate.[By July 1 of each year, a local board of education, on the advice of the Commissioner of Education, shall determine the amount of the penal sum of the bond of treasurer of the board and that of other school employees who are responsible for board of education funds.]

Section 3. A bond shall not be approved if the Commissioner of Education determines that the bond is inadequate to safeguard the funds of the district board of education[, pursuant to the commissioner's authority in KRS 156.010].

Section 4.[A district board of education shall require the bonding of all employees who are responsible for board funds.] The cost of bonds shall[may] be a liability of the general fund or of any account which the specific bond protects. The penal sum of any bond shall be determined by the following table based on an exposure factor of twenty (20) percent of the total current assets plus ten (10) percent of the total revenue in the prior fiscal year:

#### REVISED EXPOSURE SCHEDULE

EXPOSURE FACTOR	MINIMUM AMOUNT OF BOND
Up to \$25,000	\$2,500
\$25,001 to \$125,000	\$25,000

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\$125,001 to \$400,000	\$50,000
\$400,001 to \$1,000,000	\$100,000
\$1,000,001 to \$2,000,000	\$150,000
\$2,000,001 to \$4,000,000	\$200,000
\$4,000,001 to \$6,000,000	\$300,000
\$6,000,001 to \$10,000,000	\$400,000
\$10,000,001 to \$15,000,000	\$600,000
\$15,000,001 to \$25,000,000	\$800,000
\$25,000,001 to \$75,000,000	\$1,000,000
\$75,000,001 to \$175,000,000	\$1,500,000
\$175,000,001 to \$500,000,000	\$2,000,000
\$500,000,001 to \$1,000,000,000	\$3,000,000
\$1,000,000,001 to \$1,500,000,000	\$4,000,000

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

JON E. DRAUD, Commissioner of Education  
JOE BROTHERS, Chairperson

APPROVED BY AGENCY: August 14, 2008

FILED WITH LRC: August 14, 2008 at 4 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this proposed administrative regulation shall be held on September 23, 2008 at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to contact person.

**CONTACT PERSON:** Kevin C. Brown, Acting Associate Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for bonding of each local board of education treasurer in accordance with KRS 156.560.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 156.560 to establish a penal sum for the bond of treasurer and requires bonding for other school employees.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specific requirements for bonding of each local board of education treasurer and other school employees in accordance with KRS 150.560.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific requirements for bonding of each local board of education treasurer and other school employ-

ees in accordance with KRS 150.560.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment provides clarification through a number of technical amendments that will help school districts conform more closely to statutory authority, improve the level of business practice in school districts across the state, and make the regulation more easily understandable to users.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to specify requirements for bonding of each local board of education treasurer and other school employees

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying the requirements for bonding of each local board of education treasurer and other school employees

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides clarification through a number of technical amendments that will help school districts conform more closely with statutory authority.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All school districts in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed amendments will allow districts to conform more closely with statutory authority, improve the level of business practice in school districts across the state, and make the regulation more easily understandable to users.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts must align their policies and practices to conform more closely with statutory authority regarding bonding of each local board of education treasurer and other school employees. There are no additional actions necessary for Kentucky Department of Education staff.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to the School Districts and no costs to the Kentucky Department of Education due to these amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky school districts will have additional guidance that will assist them as they establish a penal sum for the bond of treasurer and bonding for other school employees in the way that best conforms with the statute and best business practices.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no additional cost to implement the amendments.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: If needed, the school district General Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The proposed amendment does not result in an increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including

cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative regulation. No additional costs are expected.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? The proposed amendment will require no additional cost.

(d) How much will it cost to administer this program for subsequent years? The proposed amendment will require no additional cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No costs.

**EDUCATION CABINET**  
**Kentucky Board of Education**  
**Department of Education**  
**(Amendment)**

**703 KAR 5:070. Procedures for the inclusion of special populations in the state-required assessment and accountability programs.**

RELATES TO: KRS 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 156.029, 156.070, 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 provides the Kentucky Board of Education with the authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and assistance for certified staff in schools and districts. This administrative regulation establishes procedures for the inclusion of special student populations in the state-required assessment and accountability programs.

Section 1. Incorporation by Reference. (1) "Procedures for Inclusion of Special Populations in the State-Required Assessment and Accountability Programs," August 2008~~[February 2004]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Assessment and Accountability, 18th Floor, Capitol Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

JON E. DRAUD, Commissioner of Education  
JOSEPH BROTHERS, Chairperson

APPROVED BY AGENCY: August 14, 2008

FILED WITH LRC: August 14, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be

held on September 23, 2008 at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to contact person.

CONTACT PERSON: Kevin C. Brown, Acting Associate Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines for the inclusion of students from special populations in Kentucky's state-required assessment and accountability program. Kentucky has a single assessment system with two accountability dimensions: one addressing the requirements of KRS 158.6455 to determine school classifications, and a second addressing the conditions necessary to conform to federal assessment and accountability requirements of the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 158.6455 and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq. (NCLB).

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for inclusive state-wide assessment and accountability programs as required by KRS 158.6453, 158.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq., including specific guidance regarding students in special populations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific administrative guidance for the implementation of the state-wide assessment and accountability programs which will be applied in all schools as required by KRS 158.6453, 158.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Proposed changes to this regulation reflect the current assessment and accountability system and new technologies, incorporate federal requirements for students with limited English proficiency, and remove repetitive language or language found in other current regulations. The basic structure of the proposed revised document maintains the same sections.

(b) The necessity of the amendment to this administrative regulation: The reporting rules for both state and federal accountability make the assessment results for student subgroups critical to successful performance in both accountability systems. The use of assessment results in state and federal accountability calculations, school improvement and student information heightens the importance of statewide consistent assessment administration practices.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying guidance for the requirements of the assessment and accountability programs.

(d) How the amendment will assist in the effective administration

tion of the statutes: This amendment streamlines the regulation. It makes the regulation easier to use in required annual trainings and provides clarity on test administration rules of school and district staff.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky and supporting staff in the Kentucky Department of Education are affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed amendment will impact test administration procedures for state-required assessments and the inclusion of students from special populations in state and federal accountability calculations.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Public school districts continue to be required to provide training annually on the regulation to appropriate staff administering the state-required assessments to students in special populations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new cost to school districts.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky school districts will have improved guidance on the inclusion of special population students in the state-required assessment and accountability programs.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The proposed amendment will require some development of new training materials performed in the normal course of work. No additional costs are expected.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current funding as appropriated to the Kentucky Department of Education and to school districts.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Current funding covers support to schools and districts on test administration issues.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation KRS 158.6455 and "The No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional expense to school districts.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? The proposed amendment will require no additional cost.

(d) How much will it cost to administer this program for subsequent years? The proposed amendment will require no additional cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### EDUCATION CABINET Kentucky Board of Education Department of Education (Amendment)

#### 703 KAR 5:080. Administration Code for Kentucky's Educational Assessment Program.

RELATES TO: KRS 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 156.070, 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 requires the Kentucky Board of Education to promulgate administrative regulations to establish a system for identifying and rewarding successful schools and to establish appropriate consequences for schools failing to meet or exceed their assistance line. This administrative regulation establishes an Administration Code for Kentucky's Educational Assessment Program for appropriate testing practices for state required tests.

Section 1. Incorporation by Reference. (1) The "Administration Code for Kentucky's Educational Assessment Program," dated August 2008~~[June, 1999]~~, is~~[hereby adopted and]~~ incorporated by reference.

(2) This document may be inspected, [and] copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Assessment and Accountability, 18th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. through 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

JON E. DRAUD, Commissioner

JOSEPH BROTHERS, Chairperson

APPROVED BY AGENCY: August 14, 2008

FILED WITH LRC: August 14, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 23, 2008 at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to contact person.

CONTACT PERSON: Kevin C. Brown, Acting Associate Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero

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Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines for test administration of Kentucky's state-required assessments. Kentucky has single assessment system with two accountability dimensions: one addressing the requirements of KRS 158.6455 to determine school classifications, and a second addressing the conditions necessary to conform to federal assessment and accountability requirements of the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 158.6455 and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq. (NCLB).

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for inclusive state-wide assessment and accountability programs as required by KRS 158.6453, 158.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq., including specific guidance for test administration.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific administrative guidance for the implementation of the state-wide assessment and accountability programs which will be applied in all schools as required by KRS 158.6453, 158.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Proposed changes to the Administration Code clarify areas where frequent questions are received, and update or remove statements that do not apply to the current assessment and accountability system. Many of the proposed changes will place in the regulation operational policies that have developed since inception of the CATS in 1999.

(b) The necessity of the amendment to this administrative regulation: The administration of state-required assessments, both custom and purchased assessments, require that Kentucky educators adhere to appropriate and consistent testing practices. The use of assessment results in state and federal accountability calculations heightens the importance of statewide consistent administration practices.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying guidance for the requirements of the assessment and accountability programs.

(d) How the amendment will assist in the effective administration of the statutes: This amendment streamlines the regulation. It makes the regulation easier to use in required annual trainings and provides clarity on test administration rules of school and district staff.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky and supporting staff in the Kentucky Department of Education are affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed amendment will impact test administration procedures for state-required assessments.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Public school districts continue to be required to provide training annually on the regulation to appropriate staff administering the state-required assessments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new cost to school districts.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): Kentucky school districts will have improved guidance on administration of state-required assessments.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The proposed amendment will require some development of new training materials performed in the normal course of work. No additional costs are expected.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current funding as appropriated to the Kentucky Department of Education and to school districts.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Current funding covers support to schools and districts on test administration issues.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation KRS 158.6455 and "The No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional expense to school districts.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? The proposed amendment will require no additional cost.

(d) How much will it cost to administer this program for subsequent years? The proposed amendment will require no additional cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### EDUCATION CABINET Kentucky Board of Education Department of Education (Amendment)

#### 704 KAR 3:340. Commonwealth Diploma Program.

RELATES TO: KRS [156.031-] 156.070, 156.160

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: [KRS 156.031 requires that administrative regulations relating to statutes amend-

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ed by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990;]KRS 156.070 authorizes the Kentucky [State]Board of[for Elementary and Secondary] Education to prescribe such courses of study, curriculums, and programs as it deems necessary for the common schools. [; and] KRS 156.160 requires the Kentucky[State] Board [for Elementary and Secondary] of Education to adopt administrative regulations determining the courses of study for the different grades and the requirements for graduation from offered courses.[A Commonwealth Diploma shall be issued to students completing a Commonwealth Diploma Program. The purpose of such a diploma and program are to encourage high academic achievement in Kentucky high schools; to encourage more of the capable students to attend college; to improve the working relationship between high schools and colleges and universities; and to allow students to gain college credit prior to attending college.] This administrative regulation implements a Commonwealth Diploma Program and sets forth the conditions and criteria under which a Commonwealth Diploma shall be issued.

Section 1. (1) The Kentucky[State] Board of[for Elementary and Secondary] Education shall award to each student in the public schools of this state completing a Commonwealth Diploma Program a Commonwealth Diploma.

(2) The[This] diploma shall be printed by the Kentucky Department of Education and sent to the appropriate district upon verification of program completion to the Department of Education by the local district. The[Each] diploma shall be issued in the name of the [each]student.

(3) A student [so identified. Verification to the Department of Education shall be on forms supplied by the Department of Education and shall be submitted in a timely fashion so as to provide for awarding of the Commonwealth Diploma at regularly scheduled graduation ceremonies, said forms being incorporated herein by reference and available for inspection, copying, and obtaining from the 18th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday. These students] receiving a Commonwealth Diploma[Diplomas] shall be cited as a recipient[recipients] at graduation ceremonies.

Section 2. The requirements for obtaining a Commonwealth Diploma shall include[are as follows]:

(1) Successful completion of at least twenty-two (22) approved units of credit, including all the minimum unit requirements for high school graduation established[set forth] in 704 KAR 3:305 and any additional units specified by the applicable local board of education.[-]

(2) Successful completion of all minimum requirements of the Precollege Curriculum established by the Council on Postsecondary [Higher] Education including[- Minimum Precollege Preparation requirements are as follows]:

(a) Language arts - four (4) units (English I, English II, English III, and English IV);

(b) Mathematics - three (3) units (Algebra I or Algebra II, geometry, and one (1) elective);

(c) Science - two (2) units (Biology I or Chemistry I, or Physics I, and one (1) elective); and

(d) Social Studies - two (2) units (including World Civilization and U. S. History).[-]

(3)(a) Successful completion (i.e., receiving a grade or the equivalent of "C" or better) of at least four (4) courses, [as hereinafter designated and] which contain essential content as described in the Advanced Placement (AP) Program Course Description booklets of the College Entrance Examination Board and which include [- such booklets being incorporated herein by reference and copies of which may be obtained from the College Entrance Examination Board]:

1. English - one (1) course;

2. Science or mathematics - one (1) course (selected from biology, chemistry, or physics, or mathematics);

3. Foreign language - one (1) course (selected from French, German, Latin, or Spanish); and

4. One (1) additional AP course (selected from English, sci-

ence, foreign language, history, computer science, political science, music, or art); or

(b) Successful completion (i.e., receiving a grade or the equivalent of "C" or better) of at least four (4) courses, [as hereinafter designated and] which contain essential content as described in the International Baccalaureate (IB) program course description booklets and which include [such booklets being incorporated herein by reference and copies of which may be obtained from the International Baccalaureate North America, Inc.]:

1. Language A, the student's first language English, - one (1) course;

2. Natural or experimental science or mathematics - one (1) course (selected from biology, chemistry, physics, or mathematics);

3. Language B, a foreign language - one (1) course (selected from French, or Spanish); and

4. One (1) additional IB or AP course; or

(c) A combination of AP and IB courses that address the content areas specified in this section; and[-]

(4) Completion of one (1) AP Examination in at least three (3) of the AP or IB areas specified in subsection (3) of this section, without regard to score.

Section 3. (1)[During the 1987-88 and 1988-89 school years, the Kentucky Department of Education shall reimburse to local school districts the costs of required AP examinations for all students successfully completing the aforementioned criteria. Beginning with the 1989-90 school year,] Reimbursement to the local school district by the Department of Education for the costs of the required AP examinations for a student successfully completing the criteria established in Section 2 of this administrative regulation shall [will] be contingent upon a student [student's] receiving a [specified] minimum composite score of eight (8) on the three (3) required AP examination.[This requirement shall be phased in over a four-year period, with said minimum composite score starting at five (5) in 1989-90 and being raised by one (1) each school year until it reaches a minimum score of eight (8) in 1992-93.]

(2) Reimbursement funds shall be sent [for distribution] to local districts once each year on the basis of documentation supplied by the district.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

JON E. DRAUD, Commissioner

JOSEPH BROTHERS, Chairperson

APPROVED BY AGENCY: August 14, 2008

FILED WITH LRC: August 14, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 23, 2008 at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to contact person.

CONTACT PERSON: Kevin C. Brown, Acting Associate Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Commonwealth Diploma Program, which provides recognition at graduation ceremonies to students who complete the program criteria and attend school in districts that participate in the voluntary program.

(b) The necessity of this administrative regulation: The provisions of KRS 156.070 do not require the Kentucky Board of Education to implement a graduation recognition program, but it does grant the board the authority to do so.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for the criteria and implementation of the Commonwealth Diploma Program as allowed by KRS 156.070.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specifics for the criteria and implementation of the Commonwealth Diploma Program as allowed by KRS 156.070.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment makes it permissible for students who participate in a combination of Advanced Placement and International Baccalaureate courses to be eligible to receive the recognition provided by the Commonwealth Diploma Program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the requirements of the Commonwealth Diploma Program.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying the requirements of the Commonwealth Diploma Program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow districts to award students who complete a combination of Advanced Placement and International Baccalaureate a Commonwealth Diploma, rather than apply to the Board annually for a waiver for such students.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All school districts in Kentucky are eligible to participate, which is coordinated by staff in the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will allow districts to award students who complete a combination of Advanced Placement and International Baccalaureate a Commonwealth Diploma, rather than apply to the Board annually for a waiver for such students.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the School Districts.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will allow districts to award students who complete a combination of Advanced Placement and International Baccalaureate a Commonwealth Diploma, rather than apply to the Board annually for a waiver for such students.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The proposed amendment does not result in additional cost.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Gifted

and Talented operating funds and Kentucky Department of Education operating funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The proposed amendment does not result in additional costs.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070 and 156.160.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative regulation. The amount of dollars expended by the State for this administrative regulation depends on the number of students qualifying for receipt of a Commonwealth Diploma and meet the benchmark established on the Advanced Placement examinations to qualify for exam fee reimbursement.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? The proposed amendment will require no additional cost

(d) How much will it cost to administer this program for subsequent years? The proposed amendment will require no additional cost

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Department for Workforce Investment**  
**Office of Employment and Training**  
**(Amendment)**

**787 KAR 1:110. Appeals.**

RELATES TO: KRS 131.570(1), 341.420(2), 341.430(2), 341.440, 341.450(2)

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 13B.020(3)(e)1 exempts unemployment insurance hearings from the provisions of KRS Chapter 13B. This administrative regulation establishes the appeals process and general rules for the conduct of hearings.

Section 1. Appeals to Referee. (1) The presentation of an appeal to a referee.

(a) Any interested party wishing to appeal to a referee from a notice of determination, or from a notice of income tax refund intercept issued by the Department of Revenue in full or partial satisfaction of an outstanding benefit overpayment shall file with the Division of Unemployment Insurance or its authorized representative a written statement clearly indicating the party's intention to appeal within the time limits prescribed by KRS 131.570(1) or 341.420(2).

(b) An appeal to a referee shall be considered filed at the time it is received by the department as established in 787 KAR 1:230.

(2) Notification of hearings.

(a) Except as provided in paragraphs (b) or (c) of this section, the Division of Unemployment Insurance shall schedule all hearings promptly and shall mail notices to the parties specifying the date, time and place of the hearing at least ten (10) days prior to the hearing date.

(b) The referee may conduct a hearing without ten (10) days notice if the parties to the hearing agree to waive the notice of hearing.

(c) Any party to a hearing may request that the hearing be rescheduled. The division shall reschedule the hearing upon presentation by a party of good cause. Examples of good cause for rescheduling shall include:

1. A claimant's inability to attend the hearing due to current employment;

2. Medical emergency;

3. Death of a family member; or

4. Acts of God.

(3) Disqualification of referees. A referee shall not participate in the hearing of an appeal in which he has an interest. Challenges to the interest of any referee shall be heard and decided by the commission.

(4) Hearing of appeals.

(a) The claimant and any other party to the appeal may present evidence as may be pertinent and may question the opposite party and his witnesses. The referee shall, if he deems it necessary to secure full information on the issues, examine each party who appears and his witnesses. The referee may take any additional evidence which he deems necessary. If additional evidence is taken, all interested parties shall be afforded an opportunity of examining and refuting the evidence.

(b) The parties to an appeal, with the consent of the referee, may stipulate the facts involved, in writing. The referee shall:

1. Decide the appeal on the basis of the stipulation; or

2. Schedule a hearing and take further evidence.

(c) Except as provided in paragraph (d) of this section, the hearing shall be scheduled in-person or via teleconference in order to provide the earliest possible hearing date.

(d) The hearing shall be scheduled via teleconference if an in-person hearing would:

1. Create undue expense for any party;

2. Require any party to travel more than fifty (50) miles;

3. Put either party or the referee at personal risk; or

4. Create a security risk for the public or division staff.

(e) The referee may grant a continuance of a hearing in order to secure necessary evidence.

(f) Parties to a teleconference hearing who wish to introduce documents or written materials into the record at the referee hearing shall provide copies of the documents to the referee and the opposing party prior to the hearing in sufficient time for it to be reviewed. Failure to provide both the referee and the opposing party with copies of the evidence shall result in its being excluded from the record.

(5) Decisions.

(a) After the hearing is concluded, the referee shall promptly set forth in writing his finding of facts on the issues involved, his decision and the reasons for the decision. If the appellant fails to appear and prosecute his appeal, the referee shall summarily affirm the determination.

(b) Copies of the decision shall be mailed to the claimant and other parties to the appeal, and a copy shall be retained in the division's files.

(c) The recording of the hearing shall be retained in the division's files pending further appeal. If no appeal is initiated, the recording may be ~~deleted~~~~destroyed~~ ninety (90) days from the

date the final administrative decision is mailed.

(d) Any referee decision may be superseded and amended after being released in order to correct obvious technical errors or omissions. The corrected decision shall have the same appeal rights as the decision which it amends or corrects.

(e) If the decision is to deny previously awarded benefits either retroactively or forthwith, a stop payment directive shall be issued to the division by the referee on the date the decision is mailed to the claimant.

Section 2. Appeals to the Commission From a Referee Decision. (1) Presentation of an appeal to the commission.

(a) Any interested party wishing to appeal to the commission from a decision of a referee shall make written application with the commission, the division or its authorized representative for leave to appeal in any form which clearly indicates the party's intention to appeal. A notice of application for leave to appeal shall be mailed by the division to other interested parties.

(b) An application for leave to appeal shall be considered initiated and filed at the time it is received by the department as established in 787 KAR 1:230.

(c) The commission shall:

1. Grant or deny the application for leave to appeal without a hearing; or

2. Notify the parties to appear at a specified place and time for argument on the application.

(2) Hearing of appeals.

(a)1. Except if the commission orders cases removed to it from a referee, all appeals to the commission may be heard upon the records of the division and the evidence and exhibits introduced before the referee.

2. In the hearing of an appeal on the record, the parties may present written arguments and, at the commission's discretion, be allowed to present oral arguments.

3. The party presenting an appeal to the commission (appellant) shall have ten (10) days from the date of mailing of the commission's notification of appeal receipt within which to file a written argument. The appellee shall have seven (7) days thereafter within which to file response.

4. Written argument shall be considered filed when it is received by the department as established in 787 KAR 1:230.

5. The commission may extend the time for filing written argument upon a showing of good cause by either party to the appeal.

(b) The commission may direct the taking of additional evidence before it, if needed, in order to determine the appeal. If, in the discretion of the commission, additional evidence is necessary to determine the appeal, the parties shall be notified of the time and place the evidence shall be taken at least seven (7) days prior to the date on which the evidence will be taken.

(c) The commission, at its discretion, may return any case or issue to a referee for the taking of additional evidence as it desires. The referee shall take the testimony in the manner prescribed for the hearing of appeals before referees and shall return the record to the commission for its decision.

(3) Any case ordered by the commission to be removed to it from a referee shall be heard and decided by the commission in the manner prescribed in Section 3 of this administrative regulation.

(4) The determination of appeals before the commission.

(a)1. Following the conclusion of a hearing, the commission shall promptly issue a written decision, which shall affirm the decision of the referee, or present a separate finding of facts, decision and reasons. The decision shall be signed by members of the commission who heard the appeal.

2. The commission may designate a decision a precedent for future cases of similar circumstance if the decision:

a. Is a matter of first impression;

b. Clarifies or defines the application of statutory language;

c. Reverses a previous precedential commission decision; or

d. Adopts a court decision.

3. A decision designated a precedent shall be binding on all lower levels of determination.

(b) If a decision of the commission is not unanimous, the decision of the majority shall control. The minority may file a dissent



from the decision of the majority setting forth the reasons why it fails to agree with the majority.

(c) Copies of the decision shall be mailed to all interested parties.

(d) Ninety (90) days after the administrative remedies have been exhausted, the commission may ~~delete~~~~[destroy]~~ the recording of the hearing under review unless the commission has previously been served with summons and complaint pursuant to KRS 341.450.

(5) Reconsideration.

(a) A party adversely affected by a decision of the Kentucky Unemployment Insurance Commission may, within ten (10) days of the mailing date of the decision, file application for reconsideration of the commission's decision. The commission shall grant or deny the application for reconsideration. An application for reconsideration shall be considered initiated and filed at the time it is received by the department as established in 787 KAR 1:230.

(b) An application for reconsideration of a decision of the commission shall not stay the running of time for appeal to the circuit court.

(6) Precedent decision process and digest. The Kentucky Unemployment Insurance Commission shall develop, distribute, and maintain a manual or digest containing all precedent decisions currently valid. The manual shall be available, on request, at a fee established by the commission. Individual decisions shall be available on request without charge.

Section 3. Appeals to the Commission From an Employing Unit. (1) Presentation of an appeal to the commission.

(a) Any employing unit wishing to make application for review of any administrative determination pursuant to KRS 341.430(2), or to appeal from a notice of income tax refund intercept issued by the Department of Revenue in full or partial satisfaction of any outstanding contribution, interest or penalty assessment, shall do so by filing with the commission, the division or its authorized representative a written statement clearly indicating the employing unit's intention to appeal within the time limits prescribed by KRS 131.570(1) or 341.420(2).

(b) An application or appeal shall be considered initiated and filed at the time it is received by the department as established in 787 KAR 1:230.

(2) Notification of hearings.

(a) Except as provided in paragraphs (b) or (c) of this section, upon receipt of an appeal under this section, the commission shall:

1. Deny the appeal as untimely; or
2. Promptly schedule a hearing and mail notices to all interested parties specifying the date, time, and place of the hearing at least ten (10) days prior to the hearing date.

(b) The commission or its representative may conduct a hearing without ten (10) days notice if the parties to the hearing agree to waive the notice of hearing.

(c) Any party to a hearing may request that the hearing be rescheduled. The commission shall reschedule the hearing upon presentation by a party of good cause. Examples of good cause for rescheduling shall include:

1. A claimant's inability to attend the hearing due to current employment;
2. Medical emergency;
3. Death of a family member; or
4. Acts of God.

(3) Appointment of commission representative. The commission may direct that any hearing be conducted on its behalf by an authorized representative. A representative shall not participate in the hearing of an appeal in which he has an interest. Challenges to the interest of any representative shall be heard and decided by the commission.

(4) Hearing of appeals.

(a) Any party to the appeal may present pertinent evidence and may question the opposite party and his witnesses. The commission shall, if it deems it necessary to secure full information on the issues, examine each party who appears and his witnesses. The commission may take any additional evidence which it deems necessary. If additional evidence is taken, all interested parties shall be afforded an opportunity of examining and refuting the evidence.

(b) The parties to an appeal, with the consent of the commission or its authorized representative, may stipulate the facts involved, in writing. The commission shall

1. Decide the appeal on the basis of the stipulation; or
2. Schedule a hearing and take further evidence.

(c) Except as provided in paragraph (d) of this subsection, the hearing shall be scheduled in-person or via teleconference in order to provide the earliest possible hearing date.

(d) The hearing shall be scheduled via teleconference if an in-person hearing would:

1. Create undue expense for any party;
2. Require any party to travel more than fifty (50) miles;
3. Put either party or the referee at personal risk; or
4. Create a security risk for the public or division staff.

(e) The commission may grant a continuance of a hearing in order to secure necessary evidence.

(f) Parties to a teleconference hearing who wish to introduce documents or written materials into the record at the hearing, shall provide copies of the documents to the commission and to the opposing party prior to the hearing in sufficient time for the evidence to be received. Failure to provide both the commission and the opposing party with copies of this evidence shall result in its being excluded from the record.

(5) Decisions.

(a)1. Following the conclusion of a hearing, the commission shall promptly set forth in writing its finding of the facts, its decision and its reasons for the decision. If the appellant fails to appear and prosecute his appeal, the commission may summarily affirm the administrative determination or notice of income tax refund intercept from which the appeal was made. The decision shall be signed by the members of the commission who considered the appeal.

2. The commission may designate a decision a precedent for future cases of similar circumstance if the decision:

- a. Is a matter of first impression;
- b. Clarifies or defines the application of statutory language;
- c. Reverses a previous precedential commission decision; or
- d. Adopts a court decision.

3. A decision designated a precedent shall be binding on all lower levels of determination.

(b) If a decision of the commission is not unanimous, the decision of the majority shall control. The minority may file a dissent from the decision of the majority setting forth the reasons why it fails to agree with the majority.

(c) Copies of the decision shall be mailed to all interested parties.

(d) Ninety (90) days after the administrative remedies have been exhausted, the commission may ~~delete~~~~[destroy]~~ the recording of the hearing under review unless the commission has previously been served with summons and complaint pursuant to KRS 341.450.

(e) Any commission decision may be superseded and amended after being released in order to correct obvious technical errors or omissions. The corrected decision shall have the same appeal rights as the decision which it amends or corrects.

(6) Reconsideration.

(a) Any party adversely affected by a decision of the commission may, within ten (10) days of the mailing date of the decision, file application for reconsideration of the commission's decision. The commission shall grant or deny the application for reconsideration. An application for reconsideration shall be considered initiated and filed at the time it is received by the department as established in 787 KAR 1:230.

(b) An application for reconsideration of a decision of the commission shall not stay the running of time for appeal to the circuit court.

Section 4. General Rules for Referee and Commission Appeals. (1) Issuance of subpoenas. Subpoenas requested by a claimant or an employer to compel the attendance of witnesses or the production of records for any hearing of an appeal shall be issued only on a sworn statement by the party applying for the issuance setting forth the substance of the anticipated proof to be obtained and the need for the proof.

(2) Appeal record. All reports, forms, letters, transcripts, communications, statements, determinations, decisions, orders, and other matters, written or oral, from the worker, employer, or personnel or representative of the division which have been written, sent, or made in connection with an appeal shall constitute the record with respect to the appeal. Pursuant to KRS 341.440, a digital recording shall be made of any hearing conducted by the division or commission.

(3) Supplying information from the records of the Division of Unemployment Insurance. Information from the records of the division shall be furnished to an interested party or his representative to the extent necessary for the proper presentation of the party's case, only upon written request therefor. All requests for information shall state, as clearly as possible, the nature of the information desired. An interested party or his representative may examine a record in the possession of a referee, the commission or its authorized representative at a hearing.

(4) Conduct of hearings. All hearings shall be conducted informally without regard to common law, statutory or technical rules or procedure and in a manner as to determine the substantial rights of the parties. The parties and their witnesses shall testify under oath or affirmation. All issues relevant to the appeal shall be considered and passed upon.

(5) Reopening hearings.

(a) Any party to an appeal who fails to appear at the scheduled hearing may, within seven (7) days from the hearing date, request a rehearing.

(b) The request shall:

1. Be granted if the party has shown good cause for his failure to appear;

2. Be in writing;

3. Set forth the reasons for the failure to attend the scheduled hearing; and

4. Be mailed or delivered to the office where the appeal was filed, to the Appeals Branch, Division of Unemployment Insurance, Frankfort, Kentucky, or to the Unemployment Insurance Commission, Frankfort, Kentucky.

(c) Upon the rehearing being granted, notice of the time and place of the reopened hearing shall be given to the parties or to their representatives.

(6) Providing a digital recording of testimony [~~tapes~~] to interested parties.

(a) Parties or their authorized representatives may secure a duplicate of the recording of testimony made at a hearing by contacting the Kentucky Unemployment Insurance Commission at the address listed on the decision.

(b) There shall be no charge for this service, provided parties shall include with their request a CD-R, CD-RW, or USB flash drive and appropriate return envelope. ~~Parties shall forward blank cassette tapes with their request in numbers sufficient to record the requested testimony.~~

(7) Retention and destruction of recordings. Ninety (90) days after the administrative remedies have been exhausted, the commission may delete~~destroy~~ the recording of the hearing under review unless the commission has previously been served with summons and complaint pursuant to KRS 341.450.

Section 5. Service of Process. The Branch Manager, Kentucky Unemployment Insurance Commission, Cabinet for Workforce Development, 275 East Main Street, Frankfort, Kentucky 40621, is hereby designated, by the Kentucky Unemployment Insurance Commission, as the person for receipt of Service of Process (Summons) in Civil Actions filed under the provisions of KRS 341.450(2).

RUSSELL L. SALSAMAN, Executive Director

APPROVED BY AGENCY: August 11, 2008

FILED WITH LRC: August 14, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2008 at 9a.m. at the Office of Employment and Training, Executive Director's Conference Room, 275 East Main Street, 2nd Floor, Frankfort, Kentucky 40621. Individuals interested in being heard at this hearing shall notify this agency in writing by

September 16, 2008 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Larry W. Moore, Policy Analyst, Office of Employment and Training, Division of Unemployment Insurance, 275 East Main Street 2CD, Frankfort, Kentucky. 40621, phone (502) 564-2900, fax (502) 564-5502.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Larry W. Moore

(1) Provide a brief summary of: What this administrative regulation does:

(a) This administrative regulation sets forth the procedures for the administration of appeals to unemployment insurance determinations.

(b) The necessity of this administrative regulation: This administrative regulation publishes the rights and responsibilities of parties affected by determinations of the Division of Unemployment Insurance and the Unemployment Insurance Commission and establishes the rules and time frames for the conduct of appeal hearings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115 provides that the secretary shall have the power to adopt regulations necessary for the administration of the unemployment insurance program. KRS 341.440(1) provides that the secretary shall prescribe the rules of conduct for appeals hearings by administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the means by which the agency conducts appeals hearings.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment updates the media that may be used for obtaining copies of recordings of appeal hearings, to reflect changing technology. The necessity of the amendment to this administrative regulation: This amendment is necessary to advise parties to appeal hearings of the compatible media that may be used to obtain recordings of appeal hearings. The existing language references cassette tapes, which will no longer be supported with the conversion to digital recording technology.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115 provides that the secretary shall have the power to adopt regulations necessary for the administration of the unemployment insurance program. KRS 341.440(1) provides that the secretary shall prescribe the rules of conduct for appeals hearings by administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in affording all parties advice of compatible recording media, ensuring that they may obtain recordings of appeal hearings in a prompt and efficient fashion.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 87,000 covered employers and 300,000 annual claimants are potentially affected, depending upon whether appeals are filed.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment: Parties will need to provide a recordable disk or flash drive instead of a blank cassette in order obtain a recording of an appeal hearing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Parties choosing the most cost-effective compatible media (CD-R) should pay no more as a result of the amendment since costs are comparable to those of cassettes. In some cases parties will pay less as a result of the amendment since longer hearing recordings require multiple cassettes to reproduce and in most instances will require only a single disk.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Parties to appeal hearings will be able to obtain recordings of their hearings in a prompt and efficient manner. Disks and flash drives are generally less susceptible to damage and accidental erasure than are cassettes.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: A minimal expenditure (less than \$100) may be required to obtain a compatible disk drive or "burner" for reproducing recordings.

(b) On a continuing basis: None associated with the amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KRS 341.240 provides for the establishment of the unemployment compensation administration fund and establishes that all of the money in this fund shall be expended solely to defray the cost of the administration of this chapter.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This administrative regulation has no effect on fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish direct or indirect fees.

(9) TIERING: Is tiering applied? Tiering is applied because the administrative regulation and amendments apply only to those claimants and employers who appeal determinations.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Most state and local governmental entities are subject to unemployment insurance coverage and thus are potentially affected by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.570(1), 151B.020, 341.115, 341.430(2), 341.440 and 341.450(2).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? There is no cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation:

#### ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Office of Mine Safety and Licensing (Amendment)

#### 805 KAR 8:060. Criteria for the imposition and enforcement of sanctions against licensed premises.

RELATES TO: KRS 351.010(1)(m), 351.1041, 351.175, 351.194, 352.010-352.550, EO 2008-507, 2008-531  
STATUTORY AUTHORITY: KRS 351.025(2), 351.070(13), 351.070(15), 352.180(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the Secretary of the Environmental and Public Protection Cabinet to promulgate administrative regulations necessary and suitable for the proper administration of KRS Chapter 351. KRS 351.025(2) requires the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission's imposition of penalties against licensed premises for violations of Kentucky mine safety laws that place miners in imminent danger of serious injury or death. KRS 351.070(15) requires the Cabinet to promulgate administrative regulations providing for the manner and method of assessing penalties by the Commissioner of the Department for Natural Resources against licensed facilities for violations of KRS Chapters 351 and 352 that relate to roof control plans, mine seal construction plans, unsafe working conditions, and mine ventilation plans that could lead to imminent danger or serious physical injury. KRS 352.180(4) requires the imposition of civil monetary penalties and other sanctions for failure to comply with the reporting requirements of KRS 352.180. EO 2008-507 and 2008-531, effective June 16, 2008, abolishes the Environmental and Public Protection Cabinet and establishes the new Energy and Environment Cabinet. This administrative regulation establishes the criteria for the revocation, suspension, or probation of a mine's license, and the imposition of civil monetary penalties against a licensed premises.

Section 1. Definitions. (1) "First offense" means the first violation by a licensed premises of a mine safety law that[which] places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, including failure to comply with the reporting requirements set forth in KRS 352.180(1), or the violation of a roof control plan, mine seal construction plans,[or] mine ventilation plan, or violations pertaining to unsafe working conditions that may[which could] lead to imminent danger or serious physical injury.

(2) "Licensed facility" or "licensed premises" means "licensee", as defined by KRS 351.010(1)(o) and 352.010(1)(s).[KRS 351.010(1)(m) and 352.010(1)(r).]

(3) "Mine ventilation plan" means the ventilation plan, including any revisions as approved by the United States Mine Safety and Health Administration.

(4) "Related successor" means an entity that obtains a license for a mine, if that entity is linked by common legal or equitable ownership through one (1) or more owners, to a previous licensee for that same mine or location.

(5) "Second offense" means the second violation by a licensed premises of a mine safety law that[which] places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, including failure to comply with the reporting requirements set forth in KRS 352.180(1), or the violation of a roof control plan, mine seal construction plans,[or] mine ventilation plan, or violations pertaining to unsafe working conditions that may[which could] lead to imminent danger or serious physical injury.

(6) "Subsequent offense" means a[any] violation beyond the third offense by a licensed premises of a mine safety law that [which] places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, including failure to comply with the reporting requirements set forth

in KRS 352.180(1), or the violation of a roof control plan, mine seal construction plans, or mine ventilation plan, or violations pertaining to unsafe working conditions that may~~[which could]~~ lead to imminent danger or serious physical injury.

(7) "Third offense" means the third violation by a licensed premises of a mine safety law ~~that~~~~[which]~~ places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, including failure to comply with the reporting requirements ~~established~~~~[set forth]~~ in KRS 352.180(1), or the violation of a roof control plan, mine seal construction plans, or mine ventilation plan, or violations pertaining to unsafe working conditions that may~~[which could]~~ lead to imminent danger or serious physical injury.

(8) "Unsafe working conditions" means a condition that involves a potential hazard that may reasonably be expected to cause a miner to be placed in danger of injury or death.

Section 2. Criteria for the Imposition and Enforcement of Sanctions Against Licensed Premises for Violations of Mine Safety Laws. (1)~~(a)~~ If a licensed premises violates a~~[any]~~ mine safety law ~~that~~~~[which]~~ places a miner in imminent danger of serious physical injury or death, which is a first offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may place the licensed premises on probation for a period of time to be determined by the commission, pursuant to KRS 351.194(5), and in proportion to the seriousness of the violations and the facts of the case.

~~(b)~~ The commission may also impose a civil monetary penalty against the licensed premises not to exceed the gross value of the production of the licensed premises for up to ten (10) working days, in accordance with the factors established in KRS 351.194(7).

(2)~~(a)~~ If a licensed premises is placed on probation for a first offense violation pursuant to subsection (1) of this section, the commission may impose the terms of the probation, and it may impose penalties for the violation of the terms of probation, including the suspension or revocation of the mine's license.

~~(b)~~ If the licensed premises satisfies the terms of its probation, the probation shall automatically expire at the end of the probationary period.

(3)~~(a)~~ The department may file charges against a licensed premises for a~~[any]~~ alleged violation of its probationary terms.

~~(b)~~ Hearings regarding the allegations shall be conducted by the Kentucky Mine Safety Review Commission, pursuant to 825 KAR 1:020.

(4)~~(a)~~ If a licensed premises violates a~~[any]~~ mine safety law ~~that~~~~[which]~~ places a miner in imminent danger of serious physical injury or death which is a second offense as adjudicated by the Kentucky Mine Safety Review Commission, the commission may suspend or revoke the mine's license for a period of not less than two (2) calendar years, up to and including revocation, pursuant to KRS 351.194(5) and (6), and in proportion to the seriousness of the violations and the facts of the case.

~~(b)~~ The commission may also impose a civil monetary penalty against the licensed premises not to exceed the gross value of the production of the licensed premises for up to ten (10) working days, in accordance with the factors established in KRS 351.194(7).

(5)~~(a)~~ If a mine license is suspended for a second offense violation pursuant to subsection (4) of this section, it shall be automatically reinstated at the end of the period of suspension.

~~(b)~~ If the mine's license is revoked, the licensed premises may apply to the Office of Mine Safety and Licensing for the reinstatement of its mine license at the end of the revocation period. The Office of Mine Safety and Licensing may grant or deny the application.

~~(c)~~ The office shall grant the application only if the licensed premises is in full compliance with a ~~[any]~~ orders of the Mine Safety Review Commission and KRS 351.175.

(6)~~(a)~~ Upon the adjudication by the Mine Safety Review Commission of a third offense by a licensed premises for a violation of a~~[any]~~ mine safety law ~~that~~~~[which]~~ places a miner in imminent danger of serious physical injury or death, the commission shall revoke the mine's license for a period of not less than three (3) calendar

years, up to and including a permanent revocation ~~without~~~~[with no]~~ possibility of reinstatement, pursuant to KRS 351.194(5) and (6) and in proportion to the seriousness of the violations and the facts of the case.

~~(b)~~ If the revocation is for a period of less than a permanent revocation ~~without~~~~[with no]~~ possibility of reinstatement, the licensed premises may apply to the Office of Mine Safety and Licensing for the reinstatement of its mine license at the end of the revocation period.

~~(c)~~ The Office of Mine Safety and Licensing may grant or deny the application. The office shall grant the application only if the licensed premises is in full compliance with~~[any]~~ orders of the Mine Safety Review Commission and KRS 351.175.

~~(d)~~ If a third offense is committed by a licensed premises, the commission may also impose a civil monetary penalty against the licensed premises not to exceed the gross value of the production of the licensed premises for up to ten (10) working days, in accordance with the factors established in KRS 351.194(7).

(7)~~(a)~~ If a licensed premises commits a violation of a~~[any]~~ mine safety law ~~that~~~~[which]~~ results in the death of a miner, whether the violation is first or subsequent offense, the Mine Safety Review Commission may suspend or revoke the mine's license, including permanent revocation of the license without the possibility for reinstatement, pursuant to KRS 351.194(5) and (6) and in proportion to the seriousness of the violations and the facts of the case.

~~(b)~~ If the commission suspends the mine's license, it shall be automatically reinstated at the end of the period of suspension.

~~(c)~~ If the commission revokes the mine's license for a period of less than a permanent revocation ~~[with no]~~ possibility of reinstatement, the licensed premises may apply to the Office of Mine Safety and Licensing for the reinstatement of its mine license at the end of the revocation period.

~~(d)~~ The Office of Mine Safety and Licensing may grant or deny the application. The office shall grant the application only if the licensed premises is in full compliance with~~[any]~~ Orders of the Mine Safety Review Commission and KRS 351.175.

~~(e)~~ The commission may also impose a civil monetary penalty against the licensed premises not to exceed the gross value of the production of the licensed premises for up to ten (10) working days, in accordance with the factors established in KRS 351.194(7).

(8) If a licensed premises that has committed one (1) or more violations pursuant to subsection (1), (4), (6), or (7) of this section is subsequently sold or goes out of business, ~~[any]~~ penalties imposed on that licensed premises for those violations shall be imposed upon an~~[any]~~ entity that is determined by the commission to be a related successor to the licensed premises in question, after a hearing conducted pursuant to KRS 351.194.

Section 3. Criteria for the Imposition and Enforcement of Civil Penalties Against Licensed Facilities for Violations of Roof Control Plans, Mine Seal Construction Plans, Unsafe Working Conditions, or Mine Ventilation Plans. (1) Amount of penalty. The commissioner or the commissioner's~~[his or her]~~ designee shall assess monetary penalties to a licensed facility ~~that~~~~[which]~~ has been issued a noncompliance or closure order for a violation of the provisions of KRS Chapters 351 and 352 relating to roof control plans, mine seal construction plans, unsafe working conditions, and mine ventilation plans that may~~[could]~~ lead to imminent danger or serious physical injury, or have resulted in serious physical injury or death, as follows:

(a) If the licensed facility has not had~~[no]~~ previous violations during the previous twenty-four (24) months relating roof control plans, mine seal construction plans, unsafe working conditions, or mine ventilation plans that may~~[could]~~ lead to imminent danger or serious physical injury, the penalty shall be not more than \$2,500; ~~[-]~~

(b) If the licensed facility has had one prior offense during the previous twenty-four (24) months relating to the violation of the roof control plans, mine seal construction plans, unsafe working conditions, or mine ventilation plan that resulted in the assessment of a penalty pursuant to this section, the penalty for a violation that may~~[could]~~ lead to imminent danger or serious physical injury shall be not more than \$4,000; ~~[-]~~

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(c) If the licensed facility has had two (2) or more offenses relating to a violation during the previous twenty-four (24) months of the roof control plans, mine seal construction plans, unsafe working conditions, or mine ventilation plan that resulted in an assessment of a penalty pursuant to this section, the penalty for a violation that ~~may~~could lead to imminent danger or serious physical injury shall be not more than \$5,000;[-]

(d) If the violation of the roof control plans, mine seal construction plans, unsafe working conditions, or mine ventilation plan results in the serious physical injury or death of a miner, the penalty shall be \$5,000, notwithstanding whether the licensed facility has been previously cited for such violation or assessed a penalty pursuant to this section;[-]

(e) Factors to be considered. In determining the amount of the penalty to be assessed, consideration shall be given to the following:

1. The licensed premises' cooperation with investigators;
2. The severity of the harm done, such as whether the violation resulted in:
  - a. Death;
  - b. Serious physical injury; or
  - c. The placement of an individual in imminent harm;
3. The licensed premises' acceptance of responsibility for its actions;
4. The licensed premises' history of violations;
5. The licensed premises' adjudicated violations in other states;
6. [Any] Mitigating circumstances; and
7. [Any] Aggravating circumstances.

(2) Notification. The commissioner or the commissioner's~~his or her~~ designee shall notify a licensed facility that has been assessed a penalty pursuant to this section of the amount of the assessment.

(3) Service.

(a) The notice of proposed penalty assessment shall be served on the licensed facility within thirty (30) days after the proposed penalty assessment is completed.

(b) Failure to serve the proposed assessment within thirty (30) days shall not be grounds for dismissal of all or part of the assessment unless the licensee proves actual and substantial prejudice as a result of the delay.

(c) Service shall be made by one (1) or more of the following methods:

1.a. [(a)] The commissioner or the commissioner's~~his or her~~ designee may place a copy of the notice of proposed assessment in an envelope[-] and address the envelope to the licensed facility at the address provided by the licensee to the Office of Mine Safety and Licensing in its most recent license application.

b. The Office of Mine Safety and Licensing shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested.

c. The Office of Mine Safety and Licensing shall maintain a record of each assessment and shall include therein the fact of mailing and the return receipt, ~~if~~when received.

d. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record.

e. Service by certified mail shall be complete upon delivery of the envelope, upon acceptance by any person eighteen (18) years of age or older at the licensee address, upon refusal to accept by any person at the licensee address, upon the United States Postal Service's inability to deliver the assessment if properly addressed to the licensee, or upon failure to claim the assessment prior to its return to the Office of Mine Safety and Licensing by the United States Postal Service.

f. The return receipt shall be proof of acceptance, refusal, inability to deliver, or failure to claim the assessment; or

2. [(b)] The commissioner or the commissioner's~~his or her~~ designee may cause the assessment, with necessary copies, to be transferred for service to a person authorized by the Secretary, who shall serve the assessment, and the return thereon shall be proof of the time and manner of service.

(4) Options of the licensed facility issued a notice of proposed assessment.

(a) Waiver.

1. The licensed facility issued a notice of proposed assessment

may choose not to contest the assessment.

2. Failure to file a petition pursuant to paragraph (b) of this subsection shall be considered a waiver.

3. A final order shall be entered by the Mine Safety Review Commission finding that:

a. [1-] The licensed facility has waived its right to an administrative hearing on the amount of the proposed assessment;

b. [2-] The fact of the violation cited in the noncompliance or closure order is deemed admitted;

c. [3-] The proposed penalty is due and payable within thirty (30) days after the entry of the final order; and

d. [4-] The violation is a first, second, third or subsequent offense.

(b) Petition for administrative hearing. The licensed facility may contest the proposed assessment and fact of violation by submitting a petition for administrative hearing within thirty (30) days of the receipt of the assessment in accordance with 825 KAR 1:020.

(5) Nothing contained within this section of this administrative regulation shall be construed to impair or contravene the Office of Mine Safety and Licensing's authority to seek sanctions pursuant to Section 2 of this administrative regulation or to prevent the Mine Safety Review Commission from imposing the sanctions in Section 2 of this administrative regulation in addition to the monetary penalties assessed pursuant to this Section.

Section 4. Criteria for the Imposition and Enforcement of Sanctions Against Licensed Facilities for Failure to Comply with the Requirements for Reporting an Accident~~[imposition and enforcement of sanctions against licensed facilities for failure to comply with the requirements for reporting an accident.]~~ (1) General.

(a) If the superintendent, mine manager, mine foreman, or a mine foreman's designee fails to comply with the reporting requirements ~~established~~set forth in KRS 352.180(1), the Mine Safety Review Commission may revoke, suspend or probate the mine license for a period of time to be determined by the commission, pursuant to KRS 351.194(5), and in proportion to the seriousness of the violations and the facts of the case.

(b) The commission shall also assess a civil monetary penalty against the licensed premises of not less than ten thousand dollars nor more than \$100,000 for the failure.

(2) Point system for computing the civil monetary penalty. The Mine Safety Review Commission shall apply the point system described in this subsection to evidence produced by the Office of Mine Safety and Licensing necessary to determine the amount of civil monetary penalty to assess against the licensee pursuant to this section. Points shall be assigned as follows:

(a) Appropriateness of the penalty.

1. Up to fifteen (15) points shall be assigned for the size of the mine.

2. The size of the mine shall be based on the tonnage produced from the mine in the previous calendar year, or in the case of a mine opened or owned less than one (1) full calendar year, the tonnage prorated to an annual basis.

3. Points shall be assigned as follows:

a. [1-] 0-300,000 tons, zero (0) points;[-]

b. [2-] 300,000-500,000 tons, five (5) points;[-]

c. [3-] 500,000-1 million tons, ten (10) points; or [-]

d. [4-] Over 1 million tons, fifteen (15) points;[-]

(b) History of previous violations.

1. Up to twenty (20) points shall be assigned based on the history of violations at the mine, cited against the licensee during the preceding twenty-four (24) month period.

2. Points shall be assigned as follows:

a. [1-] 1-5 previous violations, zero points;[-]

b. [2-] 6-10 previous violations, five (5) points;[-]

c. [3-] 11-20 previous violations, ten (10) points;[-]

d. [4-] 21-30 previous violations, fifteen (15) points; or [-]

e. [5-] Over 30 previous violations, twenty (20) points;[-]

(c) Negligence.

1. Up to twenty-five (25) points shall be assigned based on the degree of negligence the licensee exhibited in failing to report the accident.

2. Points shall be assigned as follows:

a. [1-] No negligence. There shall not be [nø] negligence on the

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part of the licensee if it exercised diligence and could not have prevented the failure to comply with the reporting requirements. Zero points shall be assigned for no negligence;[-]

b.[2.] Negligence. There shall be negligence if the licensee has mitigating circumstances for its failure to comply with the reporting requirements. Fifteen (15) points shall be assigned for negligence; or [-]

c.[3.] Reckless disregard. There shall be reckless disregard if the licensee exhibits the absence of the slightest degree of care in complying with the reporting requirements. Twenty- five (25) points shall be assigned for reckless disregard;[-]

(d) Gravity. Gravity shall be the severity of the accident and whether persons were at risk of serious physical injury or death based on the failure to comply with the reporting requirements.

1. A total of thirty (30) points shall be assigned for gravity.

2. Points shall be assigned as follows:

a.[4.] Severity. Up to twenty (20) points shall be assigned as follows for the severity of [any] injuries:

(i)[a.] No serious physical injury occurred, zero points;[-]

(ii)[b.] A serious physical injury occurred, ten (10) points; or[-]

(iii)[c.] A fatality occurred, twenty (20) points; and [-]

b.[2.] Persons at risk of serious physical injury or death. Up to ten (10) points shall be assigned based on whether persons were at risk of serious physical injury or death by the failure to comply with the reporting requirements, and [-]points shall be assigned as follows:

(i) ~~Personnel were not~~[a. No personnel were] at risk, zero points; or[-]

(ii) ~~A person was~~ [b. Person(s) were] at risk, ten (10) points.

(3) Determination of amount of penalty. The Mine Safety Review commission shall determine the amount of penalty by converting the total number of points assigned under subsection (2) of this section to a dollar amount, according to the schedule in the following table:

POINTS	AMOUNT
0	\$10,000
5	\$15,000
10	\$20,000
15	\$25,000
20	\$30,000
25	\$35,000
30	\$40,000
35	\$45,000
40	\$50,000
45	\$55,000
50	\$60,000
55	\$65,000
60	\$70,000
65	\$75,000
70	\$80,000
75	\$85,000
80	\$90,000
85	\$95,000
90	\$100,000

[Appendix A of this administrative regulation.]

(4) Waiver of use of point system to determine civil penalty.

(a)1. The Mine Safety Review Commission may waive the use of the point system contained in Section 4(2) of this administrative regulation to set the civil penalty, if it determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust.

2. The basis for every waiver shall be fully explained and documented in the record of the case.

(b)1. If the commission waives the use of the point system, it shall use the criteria established[set forth] in KRS 351.194(7) to determine the appropriate penalty.

2. If the commission has elected to waive the use of the point system, it shall give a written explanation for the basis for the assessment made in its Final Order.

Section 5. Incorporation of Reference. (1) "Notice of Proposed

Assessment," July 12, 2006, OMSL Form No. NPA-1 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Mine Safety and Licensing, 1025 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

## [APPENDIX A

POINTS	AMOUNT
0	\$10,000
5	\$15,000
10	\$20,000
15	\$25,000
20	\$30,000
25	\$35,000
30	\$40,000
35	\$45,000
40	\$50,000
45	\$55,000
50	\$60,000
55	\$65,000
60	\$70,000
65	\$75,000
70	\$80,000
75	\$85,000
80	\$90,000
85	\$95,000
90	\$100,000

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: August 12, 2008

FILED WITH LRC: August 13, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2008 at 10 a.m. at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 2008, five (5) work-days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business September 30, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Johnny Greene, Executive Director, Office of Mine Safety and Licensing, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-0140, fax (502) 573-0152.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Johnny Greene, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the imposition of sanctions, including civil monetary penalties against licensees for violations of mine safety laws that create an imminent danger of serious physical injury or death.

(b) The necessity of this administrative regulation: Imposition of civil monetary penalties against licensees for non-intentional violations of mine safety laws pertaining to mine seal construction plans and unsafe working conditions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 351.025(2) authorizes the Department for Natural resources to promulgate administrative regulations that establish comprehensive criteria for the Mine Safety

Review Commission to impose sanctions, including civil monetary penalties against licensed premises for violations of mine safety laws that place miners in imminent danger of serious injury or death. KRS 351.070(15) authorizes the cabinet to promulgate administrative regulations providing for the manner and method of assessing civil monetary penalties by the Commissioner of the Department for Natural Resources against licensed facilities for violations of KRS Chapters 351 and 352 that relate to roof control plans, mine seal construction plans, unsafe working conditions, and mine ventilation plans that could lead to imminent danger or serious physical injury. KRS 352.180(4) authorizes the imposition of civil monetary penalties and other sanctions against licensees for failure to comply with the reporting requirements of KRS 352.180.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs all licensees regulated by the Office of Mine Safety and Licensing of the policies and procedures for the imposition of penalties and sanctions against licensees for violations of mine safety laws that lead or could lead to imminent danger of serious physical injury or death in order to protect the health and safety of miners, in conformity with the express intent of the statutes.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will add a definition specific to the amendment. The amendment also adds violations of a mine seal construction plans and unsafe working conditions as items that will trigger a monetary civil penalty.

(b) The necessity of the amendment to this administrative regulation: The 2007 General Assembly amended 351.070 (15) expanding the authority of the Commissioner to assess monetary civil penalties for violation of mine seal construction plans and unsafe working conditions. This administrative regulation includes those items into the violations that will trigger a monetary civil penalty.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 351.025(2) authorizes the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission to impose sanctions, including civil monetary penalties against licensed premises for violations of mine safety laws that place miners in imminent danger of serious injury or death. KRS 351.070(15) authorizes the cabinet to promulgate administrative regulations providing for the manner and method of assessing monetary penalties by the Commissioner of the Department for Natural Resources against licensed facilities for violations of KRS Chapters 351 and 352 that relate to roof control plans, mine seal construction plans, unsafe working conditions, and mine ventilation plans that could lead to imminent danger or serious physical injury. KRS 352.180(4) authorizes the imposition of civil monetary penalties and other sanctions against licensees for failure to comply with the reporting requirements of KRS 352.180.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation informs all licensees regulated by the Office of Mine Safety and Licensing of the policies and procedures for the imposition of penalties and sanctions against licensees for violations of mine safety laws that lead or could lead to imminent danger of serious physical injury or death in order to protect the health and safety of miners, in conformity with the express intent of the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals and entities engaged in the mining of coal in the Commonwealth will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will be subjected to the imposi-

sition of sanctions, including civil penalties for violations of mine seal construction plans and unsafe working conditions that could lead to imminent danger or serious physical injury.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities that comply with mine safety laws will not be subject to any additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with mine safety laws will reduce the number of incidents that could result in an imminent danger, serious physical injury, or death.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The costs associated with introducing additions to the penalty assessment process will be minimal and will be absorbed by the agency.

(b) On a continuing basis: The number of administrative hearings may increase, but can be incorporated into current operations without additional staff or resources at this time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly or indirectly establish or increase any fees.

(9) TIERING: Is tiering applied? Yes. Tiering was applied as to the size of the mine based on coal tonnage produced in determining the imposition and enforcement of sanctions for failure to comply with accident reporting.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Office of Mine Safety and Licensing and the Mine Safety Review Commission.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. As contained in the enacted House Bill 207 of the 2007 General Assembly, the amended statute, KRS 351 070, allows for the addition of mine seal construction plans and unsafe working conditions as violations that will trigger monetary civil penalties.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation will not affect expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue generated from the penalty assessments for violations of mine safety laws is unpredictable.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Unchanged from the first year.

(c) How much will it cost to administer this program for the first year? The costs associated with introducing additional violations to the penalty assessment process will be absorbed by the agency without additional funds.

(d) How much will it cost to administer this program for subsequent years? The costs associated with administering this program are minimal.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative

regulation.

Revenues (+/-): The agency cannot determine how many penalties will be assessed in a given year. Therefore, revenues generated from penalty assessments will be unpredictable.

Expenditures (+/-): NA

Other Explanation: NA

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**Division of Health Insurance Policy and Managed Care**  
**(Amendment)**

**806 KAR 14:007. Rate and form filing for health insurers.**

RELATES TO: KRS 304.1-010, 304.1-050, 304.3-270, 304.4-010, 304.14-120, 304.14-190, 304.17A-005, 304.17A-095, 304.17A-096

STATUTORY AUTHORITY: KRS 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Executive Director of Insurance to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code, as defined in KRS 304.1-010. EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as head of the department. This administrative regulation establishes rate and form filing procedures for health insurers.

Section 1. Definitions. (1) "Basic health benefit plan" is defined in KRS 304.17A-005(4).

(2) "Commissioner" means the Commissioner of Insurance["Executive director is defined in KRS 304.1-050(1)"].

(3) "Department" means Department of Insurance.

(4) "Filing entity" means a health insurer authorized to transact business in Kentucky or an entity authorized by that health insurer to submit filings on its behalf.

(5) [(4)] "Health benefit plan" is defined in KRS 304.17A-005(22).

(6) [(5)] "Health policy form" or "form" means application, policy, certificate, contract, rider, endorsement, provider agreement, or risk sharing arrangement. [(6) "Office" is defined in KRS 304.1-050(2).]

Section 2. Filing Procedures. (1) A health insurance rate and form filing shall be accompanied by a Face Sheet and Verification Form, HIPMC-F1.

(2) A health policy form filed under policy form certification shall be accompanied by a Health Policy Forms Filing Certification Privilege Program Form, HIPMC-F2.

(3) An individual health insurance form filing shall be accompanied by an Individual Health Forms Actuarial Certification Form, HIPMC-R4.

(4) An insurer issuing, delivering, or renewing a:

(a) Health benefit plan shall complete and attach to each plan filed a Health Benefit Plan Summary Sheet - Form Filings Form, HIPMC-F35;

(b) Basic health benefit plan shall complete and attach to each plan filed a Basic Health Benefit Plan Summary Sheet - Form and Rate Filings Form, HIPMC-RF-25; and

(c) Limited health service benefit plan shall complete and attach to each plan filed a Limited Health Service Benefit Plan Summary Sheet - Form Filings, HIPMC-F37 pursuant to 806 KAR 17:440.

(5) Except for a health benefit plan rate filing pursuant to KRS 304.17A-095, a rate filing shall be accompanied by a Rate Filing Information Form, HIPMC-R36.

(6) If a rate or form filing as submitted by a health insurer is not a complete filing, the department[office] shall use an Additional Health Information Request, Form HIPMC-F16, to request submittal of the incomplete information.

(7)(a) Each form shall be identified by a unique form number in the lower left-hand corner of the first page of the form; and

(b) Other numbers shall not appear in close proximity to the form number.

(8) Each submission shall be accompanied by a submittal letter on the stationery of the filing entity which intends to use a form, listing by number all forms being submitted together with a brief description of each.

(9) If a form is submitted with alternate pages or alternative benefits, the submittal letter required by subsection (8) of this section shall:

(a) State under what conditions each alternate page or alternative benefit may be used; and

(b) Identify by a unique form number each alternate page or alternative benefit.

(10) If a filing entity files a form containing variable text, the filing entity shall file an explanation of each variation the health insurer proposes to use.

(11) Except for an insert page or alternate page, each form shall contain the corporate name and address of the health insurer.

(12) A form filed for approval by the department[office] shall not contain advertising or marketing material.

(13) If a new form is submitted, the filing entity shall identify the unique features of the form.

(14) If a filing includes a form which was previously disapproved by the department[office], the filing entity shall assign the form a new form number.

(15) A rate or form filing shall include two (2) complete sets of documents and a self-addressed stamped envelope.

Section 3. Filing Entity. A filing entity may include in a filing multiple forms or documents pertaining to a single line of insurance, filed together on a particular date.

Section 4. Date of Filing. Pursuant to KRS 304.4-010(2), a fee payable under the Kentucky insurance code shall be collected in advance. The period of time in which the commissioner[executive director] may approve or disapprove a filing shall not commence, and the submission shall not be given a filing date, until the following are received by the department[office]:

(1) The rate or form filing;

(2) The appropriate fee pursuant to 806 KAR 4:010, Section 1(21); and

(3) A form required by Sections 2 and 6 of this administrative regulation, as appropriate.

Section 5. Use of Forms and Rates. (1) A form or rate shall not be used in Kentucky until:

(a) The form or rate has been approved or certified by the department[office], which shall occur within the sixty (60) day time frame identified in KRS 304.14-120(2) except as follows:

1. If the 60th day falls on a weekend or holiday, the 60th day shall be the following business day; and

2. If the commissioner[executive director] grants an extension of the sixty (60) day time period required for approval or disapproval of a form or rate, and the insurer does not submit a corrected form or rate or additional requested information at least five (5) days prior to the expiration of the extended time period, the filing shall be disapproved; and

(b) If a rate for the form is required by KRS 304.14-120 to be approved, the appropriate rate schedule has been approved.

(2) A document subject to a filed only process, including provider directories, provider agreements, subcontract provider agreements, or risk-sharing arrangements, shall be:

(a) Filed with the department[office]; and

(b) Subject to review in accordance with KRS 304.14-120.

Section 6. Form Revision. If a filing includes a form which amends, replaces, or supplements a form, which has been previously filed and not disapproved, it shall be accompanied by a letter of explanation from the filing entity which identifies:

(1) All changes contained in the newly filed form;

(2) The form being replaced;

(3) The date the replaced form was:

(a) Approved;

(b) Withdrawn; or

(c) Submitted; and

(4) The effect the changes have upon the policy or the rates



applicable to the policy.

Section 7. Rate Revision and Annual Rate Filings. (1) The following shall be included and properly completed in a filing for rate revision or annual rate filing:

(a) Signed actuarial memorandum, in accordance with 806 KAR 17:070, Sections 3 and 4;

(b) New rate sheet, in accordance with 806 KAR 17:070, Section 3; and

(c) Forms required by Section 2 of this administrative regulation.

(2) An appropriate fee pursuant to 806 KAR 4:010, Section 1(21), shall be submitted with each filing.

Section 8. Officer Signature. A change of signature of the executing officer on a policy form shall not, because of this change alone, require a new filing.

Section 9. Electronic Filings. (1) A health insurer may file a rate or form electronically through the National Association of Insurance Commissioners' electronic system for rate and form filings via the Web site [www.serff.com](http://www.serff.com).

(2) An electronic filing as identified in subsection (1) of this section shall be in lieu of a paper filing.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form HIPMC-F1, "Face Sheet and Verification Form", (07/2008)[(02/2008)] edition;

(b) Form HIPMC-F2, "Health Policy Forms Filing Certification Privilege Program Form", (07/2008)[April-2005] edition;

(c) Form HIPMC-R4, "Individual Health Forms Actuarial Certification Form", (07/2008)[April-2005] edition;

(d) Form HIPMC-F35, "Health Benefit Plan Summary Sheet-Form Filings", (07/2008)[April-2005] edition;

(e) Form HIPMC-R36, "Rate Filing Information Form", (07/2008)[April-2005] edition;

(f) Form HIPMC-F-16, "Additional Health Information Request", (07/2008)[(02/2008)] edition;

(g) Form HIPMC-RF-25, "Basic Health Benefit Plan Summary Sheet-Form and Rate Filings", (07/2008)[(11/2007)] edition; and

(h) Limited Health Service Benefit Plan Summary Sheet - Form Filings, HIPMC-F37, (07/2008)[(07/02)] edition.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department[Office] of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) Forms may also be obtained on the department's[office's] Web site at: <http://insurance.ky.gov> ~~<http://dot.ppr.ky.gov>~~.

SHARON CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 29, 2008

FILED WITH LRC: August 13, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2008, at 9 a.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 2008, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Melea Rivera, Health Policy Specialist, Kentucky Department of Insurance, 215 West Main Street, P.O.

Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melea Rivera

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes rate and form filing procedures for use by health insurers when filing new or revised rates and forms.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify basic health benefit requirements for health insurers filing new or revised rates and forms with the Department of Insurance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 304.2-110(2), which authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. This administrative regulation establishes rate and form filing procedures for health insurers filing new or revised rates and forms for basic health benefit plans.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist insurers by providing forms and clarifying procedures for submitting new or revised basic health benefit plan rates and forms for approval by the Department of Insurance.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will clarify several definitions, make changes to comply with the drafting requirements of KRS Chapter 13A, and incorporate a revised version of form HIPMC-RF-25.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify definitions in the original administrative regulation and make technical changes to comply with the drafting requirements of KRS Chapter 13A. Furthermore, this amendment will incorporate a revised version of form HIPMC-RF-25, which was revised to conform with the recent amendment of 806 KAR 17:500 due to 2008 legislation, including 2008 Ky Acts ch. 119 and 147.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 304.2-110(2), which authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. This amendment clarifies several definitions, makes technical changes to comply with drafting requirements of KRS Chapter 13A, and incorporates a revised version of the form HIPMC-RF-25.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administrative of the statutes by clarifying several definitions, making technical changes to comply with drafting requirements of KRS Chapter 13A, and incorporating a revised version of the form HIPMC-RF-25.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects health insurers filing forms and rates for approval by the Department of Insurance. However, since the amendment primarily relates to insurers offering basic health benefit plans, the amendment will only affect fourteen (14) health insurers who have filed forms or rates related to basic health benefit plans.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Since health insurers are currently required to comply with the existing administrative regulation, limited impact is expected. However, since the amendment directly relates to basic health benefit plans, health insurers offering these specific plans will be required to revise and refile any forms and rates that

conflict with the amendment. A total of eighteen (18) health insurers were identified as filing forms or rates for basic health benefit plans in the past, however only seven (7) of these insurers have reported individuals covered under basic health benefit plans.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Since insurers currently file rate and forms with the Department of Insurance, the department does not anticipate health insurers incurring significant additional costs as a result of the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The resulting benefits are that health insurers will be more informed of basic health benefit plan requirements and in compliance with this administrative regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The Department of Insurance does not anticipate any direct or indirect costs to initially implement the amendment to this administrative regulation.

(b) On a continuing basis: The Department of Insurance does not anticipate any direct or indirect costs to implement the amendment to this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to implement and enforce this administrative regulation is the existing budget of the Department of Insurance.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The Department of Insurance does not anticipate that the implementation of this amendment will require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This amendment to the administrative regulation will clarify the definitions and incorporate a revised form. The amendment will apply equally to all Kentucky licensed health insurers offering basic health benefit plans.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance is promulgating this administrative regulation to clarify the definitions and make conforming amendments to a form incorporated by reference. This clarification will not produce a significant impact to the Department of Insurance.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(2) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. This administrative regulation establishes rate and form filing procedures for health insurers to use when filing new or revised rates and forms.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the first year for state or local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for subsequent years for state or local governments.

(c) How much will it cost to administer this program for the first year? The Department of Insurance does not anticipate significant costs relating to the administration of this amendment to an existing administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? The Department of Insurance does not anticipate any significant costs relating to the administration of this administrative regulation during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### PUBLIC PROTECTION CABINET

##### Department of Insurance

##### Division of Health Insurance Policy and Managed Care (Amendment)

#### 806 KAR 17:005. Health insurance forms and reports.

RELATES TO: KRS 304.1-010, 304.4-010, 304.14-120, 304.14-190, 304.17A-095, 304.17A-096, 304.17A-600-304.17A-629

STATUTORY AUTHORITY: KRS 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director of insurance to promulgate reasonable administrative rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as head of the department. This administrative regulation establishes forms and reports to be submitted to the Department[Office] of Insurance by a health insurer or independent review entity.

Section 1. Forms and Reports. (1) Form HIPMC-RF-25, Basic Health Benefit Plan Summary Sheet-Form and Rate Filings, shall be filed by an insurer with a form or rate for a basic health benefit plan.

(2) Form HIPMC-BHP-1, Basic Health Benefit Plan Annual Report, shall be filed annually by an insurer offering a basic health benefit plan.

(3) Form HIPMC-R32, Health Benefit Plan Rate Filing Information Form, shall be filed with a rate for a health benefit plan.

(4) Form HIPMC-F1, Face Sheet and Verification Form, shall be filed as the coversheet of a rate or form filing for a health benefit plan.

(5) An Income and Expense Worksheet shall be filed with a rate for a health benefit plan.

(6) Form HIPMC-R33, Health Benefit Plan Regions, which includes eight (8) identified health benefit plan regions in Kentucky, may be filed for a geographic region factor adjustment in a rate for a health benefit plan.

(7) Form HIPMC-R34, Certification Form, shall be filed with a rate for a health benefit plan for an individual, association, or small group.

(8) Form HIPMC-IRE-1, Application for Certification of an Independent Review Entity, shall be filed by an independent review entity applying for certification to perform external reviews in Kentucky.

(9) Form HIPMC-IRE-2, Assignment of External Review, shall be filed by an insurer if an external review is assigned to an independent review entity.

(10) Form HIPMC-IRE-3, External Review Decision Notification Form, shall be used by an independent review entity to notify the Department of Insurance of an external review decision.

(11) Form HIPMC-IRE-4, Independent Review Entity Annual Report, shall be filed by an independent review entity annually with the Department of Insurance.

(12) Form HIPMC-IRE-5, Guidelines for Approving External Review Fees, shall be used by the Department of Insurance to

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approve excess fees of an independent review entity in unusual or complicated circumstances.

(13) Form HIPMC-IRE-6, External Review Information Face Sheet, shall be used by an insurer to provide information and documentation relating to an external review to an independent review entity.

(14) Form HIPMC-UR-1, Utilization Review Registration Application shall be filed by an insurer or private review agent applying for registration to perform utilization review in Kentucky; and

(15) Form HIPMC-UR-2, Annual Utilization Review Report Form, shall be filed by an insurer or private review agent annually to the Department of Insurance.

(16) Form HIPMC-R1, Risk-sharing Arrangement Information Sheet, shall be filed by an insurer for each risk-sharing arrangement in force.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form HIPMC-RF-25, Basic Health Benefit Plan Summary Sheet-Form and Rate Filings", (07/2008)(44/2007);

(b) "Form HIPMC-BHP-1, Basic Health Benefit Plan Annual Report", (07/2008)(04/05);

(c) "Form HIPMC-R32, Health Benefit Plan Rate Filing Information Form", (07/2008)(04/05);

(d) "Form HIPMC-F1, Face Sheet and Verification Form", (07/2008)(2/2008);

(e) "Income and Expense Worksheet", (1998);

(f) "Form HIPMC-R33, Health Benefit Plan Regions", (12/00);

(g) [and (j)] "Form HIPMC-R34, Certification Form", (07/2008);

(h) "HIPMC-IRE-1, Application for Certification of an Independent Review Entity", (07/2008);

(i) "HIPMC-IRE-2, Assignment of External Review", (7/2008);

(j) "HIPMC-IRE-3, External Review Decision Notification Form", (07/2008);

(k) "HIPMC-IRE-4, Independent Review Entity Annual Report", (07/2008);

(l) "HIPMC-IRE-5, Guidelines for Approving External Review Fees", (07/2008);

(m) "HIPMC-IRE-6, External Review Information Face Sheet", (07/2008);

(n) "HIPMC-UR-1, Utilization Review Registration Application", (07/2008); and

(o) "HIPMC-UR-2, Annual Utilization Review Report Form", (07/2008)

(p) "Form HIPMC-R1, Risk-sharing Arrangement Information Sheet", (07/00)(04/05).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department[Office] of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) Forms may also be obtained on the Department[Office] of Insurance Web site at <http://insurance.ky.gov>[<http://doi.ppr.ky.gov/>].

SHARON CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 29, 2008

FILED WITH LRC: August 13, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2008, at 9 a.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 2008, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the pub-

lic hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Melea Rivera, Health Policy Specialist, Kentucky Department of Insurance, 215 West Main Street; P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melea Rivera

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes forms and reports for use by health insurers or independent review entities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide health insurers with reports and forms that shall be used by health insurers operating in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 304.2-110(2), which authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. This administrative regulation establishes forms and reports for use by health insurers or independent review entities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist insurers by providing the documents required to file new or revised rates and forms or to report data to the Department of Insurance (DOI).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will add additional forms and reports that were previously incorporated by reference in administrative regulations under 806 KAR Chapter 17.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to streamline the process for amending forms that are incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 304.2-110(2), which authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. This administrative regulation establishes forms and reports for use by health insurers and independent review entities.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by provide a uniform location for all forms or reports incorporated by reference in 806 KAR Chapter 17.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all health insurers or independent review entities that operate in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Health insurers and independent review entities are currently required to use the documents incorporated by reference in this administrative regulation. These forms have been incorporated by reference in multiple administrative regulations in 806 KAR Chapter 17, therefore, limited impact is expected.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): DOI does not anticipate that health insurers will incur significant additional costs as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The resulting benefits are that health insurers will be in compliance with this administrative regulation and that DOI will house all the 806 KAR Chapter 17 forms and

reports in one administrative regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: DOI does not anticipate any direct or indirect costs to initially implement the amendment to this administrative regulation.

(b) On a continuing basis: DOI does not anticipate any direct or indirect costs to implement the amendment to this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to implement and enforce this administrative regulation is the existing budget of the DOI.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: DOI does not anticipate that the implementation of this amendment will require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation incorporates by reference forms and reports for use by insurers and independent review entities. The requirement to use these documents will apply equally to all Kentucky licensed health insurers and independent review entities that do business in Kentucky.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance is promulgating this administrative regulation to establish the forms and reports for use by insurers who do business in the State of Kentucky. This administrative regulation will not produce a significant impact to the Department of Insurance.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(2) authorizes the Executive Director of Insurance to promulgate administrative regulations. This administrative regulation establishes forms and reports for use by health insurers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the first year for state or local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for subsequent years for state or local governments.

(c) How much will it cost to administer this program for the first year? The Department of Insurance should not incur significant costs to administer this amendment to an existing administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? The Department of Insurance should not incur costs to administer this administrative regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### PUBLIC PROTECTION CABINET

##### Department of Insurance

#### Division of Health Insurance Policy and Managed Care (Amendment)

#### 806 KAR 17:280. Registration, utilization review, and internal appeal.

RELATES TO: KRS ~~304.2-140, 304.17-412, 304.17A-600 - 304.17A-619, 304.17A-623, 304.17C-010, 304.17C-030, 304.17A-605, 304.17A-609, 304.17A-613,~~ 304.18-045, 304.32-147, 304.32-330, 304.38-225

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-609, 304.17A-613

NECESSITY, FUNCTION, AND CONFORMITY: [EO 2004-731, signed July 9, 2004, created the Office of Insurance.] KRS 304.2-110(1) authorizes the executive director to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-609 requires the office to promulgate [emergency] administrative regulations regarding utilization review and internal appeal. KRS 304.17A-613 requires the office to promulgate [emergency] administrative regulations to develop a process for the registration of insurers or private review agents. EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as head of the department. This administrative regulation establishes requirements for the registration of insurers or private review agents, and the utilization review process, including internal appeal of decisions.

Section 1. Definitions. (1) "Adverse determination" is defined in KRS 304.17A-600(1).

(2) "Authorized person" is defined in KRS 304.17A-600(2).

(3) "Board" means one (1) of the following governing bodies:

(a) The American Board of Medical Specialties;

(b) The American Osteopathic Association; or

(c) The American Board of Podiatric Surgery.

(4) [(3)] "Coverage denial" is defined in KRS 304.17A-617(1). [(4)] "Office" means the Office of Insurance.]

(5) "Department" means Department of Insurance.

(6) "Enrollee" is defined in KRS 304.17C-010(2).

(7) [(6)] "Insurer" is defined in KRS 304.17A-600(8).

(8) [(7)] "Limited health service benefit plan" is defined in KRS 304.17C-010(5).

(9) [(8)] "Nationally recognized [Nationally-recognized] accreditation organization" is defined in KRS 304.17A-600(10).

(10) [(9)] "Notice of coverage denial" means a letter, a notice, or an explanation of benefits statement advising of a coverage denial as defined by KRS 304.17A-617(1).

(11) [(40)] "Policies and procedures" means the documentation which outlines and governs the steps and standards used to carry out functions of a [the] utilization review program [the release of which is governed by KRS 304.17A-613(6)].

(12) [(41)] "Private review agent" is defined in KRS 304.17A-600(11).

(13) "Provider" is defined in KRS 304.17A-600(13).

(14) [(12)] "Qualified personnel" is defined in KRS 304.17A-600(14).

(15) [(43)] "Registration" is defined in KRS 304.17A-600(15).

(16) [(44)] "Utilization review" is defined in KRS 304.17A-600(18).

(17) [(45)] "Utilization review plan" is defined in KRS 304.17A-600(19).

Section 2. Registration Required. (1) The ~~department[office]~~ shall issue[or renew] a registration to an applicant that has met ~~the[all]~~ requirements of KRS 304.17A-600 through 304.17A-619 and 304.17A-623, if applicable, and Sections 2 through 11 of this administrative regulation.

(2) An applicant seeking [issuance or renewal of] registration to provide or perform utilization review shall:

(a) Submit an application [for issuance or renewal of registration] to the ~~department[office]~~ as required by Section 4 of this ad-

ministrative regulation; and

(b) Pay an application fee as required by Section 3 of this administrative regulation.

(3) An application~~for issuance or renewal of registration~~ shall be accompanied by the required documentation listed in Section 4 of this administrative regulation.

(4) If an insurer or private review agent desires a renewal of registration to perform utilization review, an application for renewal of registration shall be submitted to the department[office] at least ninety (90) days prior to expiration of the current registration.

Section 3. Fees. (1) An application ~~for issuance or renewal of registration~~ shall be accompanied by a fee of \$1,000.

(2) A submission of changes to utilization review policies or procedures to the department[office] shall be accompanied by a fee of fifty (50) dollars.

(3) A fee as established in subsection (1) or (2) of this section shall be made payable to the Kentucky State Treasurer.

Section 4. Application Process. (1) An applicant shall complete and submit to the ~~department an[office a utilization review registration]~~ application, HIPMC-UR-1, as incorporated by reference in 806 KAR 17:005, and documentation to support compliance with[(10/02), which shall comply with the requirements established by]KRS 304.17A-600 through 304.17A-623[304.17A-619], as applicable, including:

(a) A utilization review plan~~[that includes the items listed in KRS 304.17A-609(1)]~~;

(b) The identification of utilization review criteria, including criteria for review of inpatient and outpatient services;

(c) Types and qualifications of personnel,~~[either]~~ employed directly or under contract, performing utilization review in compliance with KRS 304.17A-607(1)(a), including names, addresses, and telephone numbers of the medical director and contact persons for questions regarding the filing of the application;

(d) A toll-free telephone number to contact the insurer, limited health service benefit plan, or private review agent, as required by KRS 304.17A-607(1)(e) and 304.17A-609(3);

(e) A copy of the policies and procedures;

1. Required[required] by KRS 304.17A-609(4) [regarding reasonable accessibility during normal business hours in this state];

2. To[(f) A copy of the policies and procedures to] ensure availability to conduct utilization review, including the response time to return telephone calls if an answering machine is used, in accordance with KRS 304.17A-607(1)(f);

[(g)] A copy of the policies and procedures by which:

1. A limited health service benefit plan shall provide a notice of review decision which complies with KRS 304.17A-607(1)(h) and [(j)304.17A-607(1)(j)] and, if applicable, 304.17A-607(1)(h), concerning a denial, limitation, reduction, or termination of health care benefits] and[which] includes:

a. Date of the review decision; and

b. Instructions for filing an internal appeal; or

2. An insurer or private review agent provides a notice of review decision, which complies with KRS 304.17A-607(1)(h) and [(j)304.17A-607(1)(j)] and, if applicable, KRS 304.17A-607(1)(h), concerning a denial, limitation, reduction, or termination of health care benefits] and[which] includes:

a. Date of the review decision;

b. Instructions for filing an internal appeal, including information concerning:

(i) The availability of an expedited internal appeal; and

(ii) For an adverse determination, the[a covered person's] right to request that[a review of] the appeal be conducted by a board eligible or certified physician pursuant to KRS 304.17A-617(2)(c); and

c. Information relating to the availability of:

(i) A review of a coverage denial by the department[office] following completion of the internal appeal process; or[and]

(ii) A review of an adverse determination by an independent review entity following completion of the internal appeal process, in accordance with KRS 304.17A-623;

[(h)] If [only] a part of the utilization review process[, rather than the entire utilization review process,] is delegated, a descrip-

tion of the:

1. Delegated function;

2. Entity to whom the function was delegated, including~~[by]~~ name, address, and telephone number; and

3. Monitoring mechanism used by the insurer or private review agent to assure compliance of the delegated entity with paragraph ~~(f) [(g)]~~ of this subsection;

[(h)] [(f)] A sample copy of an[any] electronic or written notice of review decision, which complies[as applicable, in compliance] with paragraph (f) [(g)] of this subsection;

[(i)] [(f)] A copy of the policies and procedures by which a covered person, authorized person, or provider may request an[an] appeal of an adverse determination or coverage denial in accordance with KRS 304.17A-617, including:

1. The method by which an appeal may be initiated, including:

a. An oral request followed ~~[up]~~ by a brief[an abbreviated] written request, or a written request for an expedited internal appeal;

b. A written request for a nonexpedited internal appeal; and

c. If applicable, the completion of a[any] specific form[forms], including a medical records release consent form;

2. Time frames for:

a. Conducting a review of an initial decision; and~~[for]~~

b. Issuing an internal appeal decision;

3. Procedures for coordination of expedited and nonexpedited appeals;

4. Qualifications of the person conducting internal appeal of the initial decision; and

5. Information to be included in the internal appeal determination in accordance with KRS 304.17A-617(2)(e), including the:

a. ~~[The]Title[.], and, if applicable, the license number, state of licensure, and certification of specialty or subspecialty of the person making the internal appeal determination;~~

b. ~~[The]Clear, detailed decision[in clear terms and sufficient detail to explain the decision]; and~~

c. ~~[Instructions for requesting:~~

~~(i) An external review of an adverse determination upheld by the internal appeal determination, including the] Availability of an expedited external review of an adverse determination; [or~~

~~(ii) Departmental review of a coverage denial upheld by the internal appeal determination]; and~~

6. A sample copy of the internal appeal determination~~[to be sent] in compliance with paragraph (i) [(f)] 5 of this subsection;~~

[(j)] [(k)] A copy of the policies and procedures, which[to]:

1. Address and ensure[Protect] the confidentiality of medical information in accordance with KRS 304.17A-609(5), 806 KAR 3:210, 806 KAR 3:220, and 806 KAR 3:230;

2. Comply with requirements of KRS 304.17A-615~~[relating to payment] if the insurer or private review agent fails to:~~

a. Provide a timely utilization review decision; or

b. Be accessible, as determined by verifiable documentation of a provider's attempts to contact the insurer or private review agent, including verification by:

i. Electronic transmission records; or

ii. Telephone company logs;

3. Comply with requirements of KRS 304.17A-619, regarding the submission of new clinical information prior to the initiation of the external review process;

4. Address and ensure consistent application of review criteria for inpatient and outpatient services ~~in[the rendering of] review decisions; and~~

5. Comply with requirements of KRS 304.17A-607(1)(k)~~[regarding the review and comment on protocols by participating physicians and other providers], as applicable, [;~~

[(l) If applicable, a copy of the written materials that provide covered persons, enrollees of limited health service benefit plans, and providers with the following information at the time of enrollment and thereafter upon request, and the mechanism for disseminating the written material:

1. Their rights, responsibilities and liabilities in accessing covered services subject to utilization review, including the documentation requirements of KRS 304.17A-615 and identify:

a. When utilization review is required;

b. Who may request utilization review; and

c. When the insurer, limited health service benefit plan, or pri-

vate review agent shall be contacted;

2. Telephone numbers and hours of operation of the insurer, limited health service benefit plan, or private review agent and how to contact the insurer, limited health service benefit plan, or private review agent for a review determination after normal business hours;

3. Time frames for utilization review decisions in accordance with KRS 304.17A-607(1)(h);

4. Explanation that the failure of an insurer, limited health service benefit plan, or private review agent to make a timely determination within the required time frames shall be an adverse determination for the purpose of initiating an internal appeal;

5. The right to file a written complaint relating to utilization review with the office in accordance with KRS 304.17A-613(8);

6. Except for an enrollee of a limited health service benefit plan:

a. Appeal rights to challenge an adverse determination, including:

(i) Internal appeals, including expedited appeals; and

(ii) External reviews, including expedited reviews;

b. The right of a covered person to request office review of a coverage denial after an insurer or private review agent upholds a coverage denial on internal appeal, in accordance with KRS 304.17A-617(2)(c)4; and

c. The option of a covered person to request that an internal appeal be conducted by a board eligible or certified physician in the appropriate specialty or subspecialty area in accordance with KRS 304.17A-617(2)(c);

7. The right of a provider to review and comment on protocols pursuant to KRS 304.17A-607(1)(k);

8. The right of a covered person to submit new clinical information at any time during an internal appeal of an adverse determination or coverage denial to an:

a. Insurer; and

b. Provider; and

9. Except for an enrollee of a limited health service benefit plan, the right of a covered person to submit new clinical information at any time during an external review of an adverse determination or coverage denial to an:

a. Insurer;

b. Provider; and

c. Independent review entity; and

(m) If the applicant is a private review agent only, a listing of the entities for which the private review agent is performing utilization review in this state in accordance with KRS 304.17A-607(4).]

(2) Upon review[receipt] of an application for [issuance or renewal of] registration, or submitted changes to utilization review policies and procedures in accordance with KRS 304.17A-607(3), the department[office] shall:

(a) Inform the applicant if supplemental information is [or is not] needed;

(b) Identify and request that supplemental information be submitted to the department[:

1. applicant shall submit requested information] within thirty (30) days; [or]

(c) [2:] If requested information is not provided to the department [office] within the timeline established in paragraph (b) of this subsection[thirty (30) days, the office shall]:

1. [a.] Deny the application for[issuance or renewal of] registration or proposed changes to utilization review policies and procedures; and

2. [b.] Not refund the application or filing fee; and

(d) [(b) Review the application and material required by KRS 304.17A-600 through 304.17A-619 and 304.17A-623, and Sections 2 through 11 of this administrative regulation; and

(e) Approve or deny[issuance or renewal of] registration or proposed changes to utilization review policies and procedures.

(3) In order to be registered to perform utilization review in Kentucky, an applicant which holds accreditation or certification in utilization review by a nationally recognized [nationally-recognized] accreditation organization in accordance with KRS 304.17A-613(10) shall be required to submit with its completed application to the department[office]:

(a) Evidence of current accreditation or certification in utilization

review, including[which includes] an expiration date; and

(b) Documentation to demonstrate compliance with requirements of[in accordance with] KRS 304.17A-613(10).

Section 5. Denial or Revocation Hearing Procedure. Upon [the] denial of an application for[issuance or renewal of a] registration, or suspension or revocation of an existing registration, the department[office] shall:

(1) Give written notice of its action; and

(2) Advise the applicant or registration holder that if dissatisfied, a[request for a] hearing may be requested and filed in accordance with KRS 304.2-310.

Section 6. Complaints Relating to Utilization Review [Complaint Process]. (1) A written complaint regarding utilization review shall be reviewed by the department [office] in accordance with KRS 304.17A-613(8):

(a) A written complaint may be:

1. Handwritten or typed;

2. Electronic; or

3. Transmitted by facsimile.

(b) A written complaint shall include any information relating to the complaint.

(2) Upon receiving a copy of the complaint, an insurer[and a letter from the office shall be sent to the insurer, including an insurer offering a limited health service benefit plan, or private review agent shall provide a response in accordance with KRS 304.17A-613(8)(a)[KRS 304.17A-613(8)], which includes[requiring the following]:

(a) Any information relating to the complaint; and

(b) Corrective[A response by the insurer, including an insurer offering a limited health service benefit plan, or private review agent to the complaint, including corrective] actions to address[resolve] the complaint, if applicable[any], including a timeframe for each action[time frames for those actions].

(3) Within thirty (30) days of implementation of a[completion of its] corrective action, as identified in subsection (2) of this section, an insurer or private review agent shall notify the department in writing[office] of the implementation of the corrective action.

(4) If an insurer or private review entity fails to comply with this section, the department may impose a penalty in accordance with KRS 304.2-140.

(5) [(4)]The number, [severity,] recurrence, and type of complaints, as identified in subsection (1) of this section, [if any,] shall be considered by the department[office] in reviewing an application for [issuance or renewal of] registration pursuant to[, as required by] KRS 304.17A-613(9).

Section 7. Internal Appeals for a Health Benefit Plan. In addition to the requirements of KRS 304.17A-617, and as part of an internal appeals process, an insurer or private review agent shall:

(1) Allow a covered person, authorized person, or provider acting on behalf of a covered person[.] to request an internal appeal [within a time frame of] at least sixty (60) days following[after] receipt of a denial letter;

(2) Provide written notification of an internal appeal determination[a] decision as required by KRS 304.17A-617(2)(a), (b), and (e), which shall include the:

(a) Title[.] and, if applicable, the license number, state of licensure and specialty or subspecialty certifications[., if any,] of the person performing the review;

(b) Elements required in a letter of denial in accordance with 806 KAR 17:230, Sections 4 and 5, if applicable;

(c) Position and telephone number of a contact person who may provide information relating to the internal appeal [review]; and

(d) Date on which the decision was rendered;

(3) Maintain written records of an[all] internal appeal[appeals received], including the:

(a) Reason for the internal appeal;

(b) Date~~[of request]~~ that the internal appeal was received by the insurer or private review agent;

(c) Date of the internal appeal decision;

(d) Internal appeal decision; and

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(e) Information required by Section ~~4(1)(i)(5)[4(1)(j)5]~~ of this administrative regulation; and

(4) Retain a record of an internal appeal decision for five (5) subsequent years in accordance with 806 KAR 2:070.

Section 8. Internal Appeals for a Limited Health Service Benefit Plan. (1) An insurer offering a limited health service benefit plan shall have an internal appeals process which shall:

(a) Be disclosed to an enrollee in accordance with KRS 304.17C-030(2)(g); and

(b) Include provisions, which:

1. Allow an enrollee, authorized person, or provider acting on behalf of the enrollee to request an internal appeal within ~~[a time frame of]~~ at least sixty (60) days ~~of[after]~~ receipt of a notice of adverse determination or coverage denial; and

2. Require the limited health service benefit plan ~~to[make a decision and]~~ provide a written internal appeal determination within thirty (30) days ~~following[after]~~ receipt of a request for an internal appeal.

(2) A notice of adverse determination or coverage denial shall include a disclosure of the availability of the internal appeals process.

~~[(3) The internal appeals process may be initiated by the enrollee, an authorized person, or a provider acting on behalf of the enrollee.]~~

Section 9. Reporting Requirements. By March 31 of each calendar year, an insurer or private review agent shall complete and submit to the department[office] a HIPMC-UR-2, as incorporated by reference in 806 KAR 17:005,[(07/04)] for the previous calendar year.

Section 10. Maintenance of Records. An insurer or private review agent shall maintain documentation:

~~(1) Adequate documents in order]~~ to assure compliance with KRS 304.17A-600 through 304.17A-619, 304.18-045, 304.32-147, 304.32-330, 304.38-225, and 304.47-050, including[- Documentation shall include]:

~~(1)[(a)]~~ Proof of the volume of reviews conducted per the number of review staff broken down by staff answering the phone;

~~(2) Information relating to the[(b)]~~ availability of physician consultation;~~[and]~~

~~(3)[(c) Other]~~ Information which supports[shall provide proof] that based on call volume, the insurer or[insurers'] private review agent has sufficient staff to return calls in a timely manner;

~~(4)[(2) Documentation in order to assure compliance with KRS 304.17A-600 through 304.17A-619, 304.18-045, 304.32-147, 304.32-330, 304.38-225 and 304.47-050. Documentation shall include:~~

~~(a)]~~ Proof of the volume of phone calls received on the toll-free phone number per the number of phone lines;~~[and]~~

~~(5) Telephone call[(b) An ]~~ abandonment rate; and

~~(6) Proof[(3) Documentation to assure compliance with KRS 304.17A-600 through 304.17A-619, 304.18-045, 304.32-147, 304.32-330, 304.38-225 and 304.47-050. Documentation shall include proof]~~ of the response time of insurer or private review agent [agent's response time] for returned phone calls to a provider if[when] a message is taken.

Section 11. Cessation of Operations to Perform Utilization Review. (1) Upon a decision to cease utilization review operations in Kentucky, an insurer or private review agent shall submit the following to the department[office] thirty (30) days or as soon as practicable prior to ceasing operations:

(a) Written notification of the cessation of operations, including the proposed date of cessation and the number of pending utilization review decisions with projected completion dates; and

(b) A written action plan for cessation of operations, which shall be subject to approval by the department[office] prior to implementation.

(2) Annual reports required pursuant to Section 9 of this administrative regulation shall be submitted to the department[office] within thirty (30) calendar days of ceasing operations.

~~[Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Utilization Review Registration Application, HIPMC-UR-1 (07/04)"; and~~

~~(b) "Annual Utilization Review Report Form, HIPMC-UR-2 (07/04)".~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the office's web site at: <http://doi.ppr.ky.gov/kentucky/>.]~~

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: August 12, 2008

FILED WITH LRC: August 13, 2008 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 2008, at 9 a.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 2008, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Melea Rivera, Health Policy Specialist, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Melea Rivera

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the registration of insurers or private review agents and the utilization review process, including internal appeal of decisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide insurers and private review agents with notice of the requirements and the process for registering to provide utilization review.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 304.2-110(2), which authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. Specifically, KRS 304.17A-609 requires the office to promulgate administrative regulations regarding utilization review and internal appeal. KRS 304.17A-613 requires the office to promulgate administrative regulations to develop a process for the registration of insurers or private review agents. This administrative regulation establishes requirements for the registration of insurers or private review agents and the utilization review process, including internal appeal of decisions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist insurers and private review agents by providing the requirements and the process for registering to provide utilization review

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will correct citations and definitions, change occurrences of executive director and office in accordance with EO 2008-507, revise sections to clarify language and require-

ments, and make other changes to comply with the drafting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correct citations and definitions, change occurrences of executive director and office in accordance with EO 2008-507, and clarify language.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 304.2-110(2), which authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. Specifically, KRS 304.17A-609 requires the office to promulgate administrative regulations regarding utilization review and internal appeal. KRS 304.17A-613 requires the office to promulgate administrative regulations to develop a process for the registration of insurers or private review agents. This amendment corrects citations and definitions, incorporates changes from EO 2008-507, revises sections to clarify language and requirements, and makes other changes to comply with the drafting requirements of KRS Chapter 13A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by correcting several definitions, revising sections to clarify language and requirements, and making other changes to comply with the drafting requirements of KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation may affect approximately seventy-five (75) insurers and private review agents who are currently registered to perform utilization review in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Since health insurers and private review agents are currently required to comply with the existing administrative regulation and the proposed amendments are for clarification, none of the registered entities will be expected to amend any policies and procedures already on file with the Department of Insurance (DOI). These entities will, however, be required to begin utilizing the applicable revised incorporated documents upon the effective date of the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): DOI does not anticipate that health insurers or private review entities will incur any additional costs as a result of this amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The resulting benefits are that health insurers and private review agents will be in compliance with this administrative regulation and there will be less confusion regarding the utilization review registration requirements and internal appeal processes.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: DOI does not anticipate any direct or indirect costs relating to the initial implementation of the amendment to this administrative regulation.

(b) On a continuing basis: DOI does not anticipate any direct or indirect costs relating to the ongoing implementation of the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to implement and enforce this administrative regulation is the existing budget of the DOI.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: DOI does not anticipate that the implementation of this amendment will require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This

amendment to an existing administrative regulation does not establish new fees, nor does this amendment directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This amendment to the administrative regulation will clarify the requirements for insurers or private review agents to register with DOI and provide utilization review. The amendment will apply equally to all Kentucky licensed health insurers providing utilization review and private review agents.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance (DOI) is promulgating this administrative regulation to clarify the requirements for utilization review registration and internal appeal processes. This clarification will not produce a significant impact to DOI.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(2) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate significant revenue in the first year for state or local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate significant revenue in subsequent years for state or local governments.

(c) How much will it cost to administer this program for the first year? DOI does not anticipate significant costs associated with the implementation of this amendment to an existing administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? DOI does not anticipate any costs associated with the implementation of this administrative regulation in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### PUBLIC PROTECTION CABINET

##### Department of Insurance

##### Division of Health Insurance Policy and Managed Care (Amendment)

#### 806 KAR 17:290. Independent External Review Program.

RELATES TO: KRS 304.2-100, 304.2-230, 304.2-310, 304.17A-600, 304.17A-621-304.17A-631, 304.17A-700

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-629

NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-731, signed July 9, 2004, created the Office of Insurance.] KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-629 requires the office to promulgate administrative regulations regarding the Independent External



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Review Program. EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as head of the department. This administrative regulation establishes insurer requirements, procedures for the certification of independent review entities, and the process for initiating and conducting external review of utilization review decisions. It also establishes disclosure requirements of the external review process to be included in the health benefit plan issued at enrollment of a covered person.

Section 1. Definitions. (1) "Adverse determination" is defined in KRS 304.17A-600(1).

(2) "Assign" or "assignment" means selection of an independent review entity by an insurer, and acceptance of a request to conduct an external review by an independent review entity.

(3) "Authorized person" is defined in KRS 304.17A-600(2).

(4) "Commissioner" means Commissioner of Insurance.

(5) "Coverage denial" is defined in KRS 304.17A-617(1).

(6) [(4)] "Covered person" is defined in KRS 304.17A-600(4).

(7) "Department" means Department of Insurance. [(5) "Office" means the Office of Insurance. (6)]

(8) "Electronic" or "electronically" is defined KRS 304.17A-700(7).

(9) [(7)] "External review" is defined by KRS 304.17A-600(5).

(10) "Financial hardship" means the:

(a) Gross income of the covered person is below 200 percent of the federal poverty level based upon family size as shown by a federal income tax return for the previous year; or

(b) Covered person's participation in one (1) of the following programs:

1. National Prescription Drug Patient Assistance;

2. Kentucky Transitional Assistance (K-TAP);

3. Kentucky Medical Assistance; or

4. Unemployment Insurance.

(11) [(8)] "Independent review entity" is defined in KRS 304.17A-600(7).

(12) [(9)] "Insurer" is defined in KRS 304.17A-600(8).

(13) "Provider" is defined in KRS 304.17A-600(13).

(14) [(10)] "Reviewer" means an individual selected by the independent review entity to conduct an external review and make a recommended decision to the independent review entity.

Section 2. Requirements of an Insurer. (1) An insurer shall:

(a) Disclose to a covered person in a clear, concise, [consumer friendly] written format the following information concerning an external review:

1. At [the time of] enrollment, the right to an external review in accordance with KRS 304.17A-505(1)(g);

2. The availability of an external review, including expedited external review, in the insurer's notice of an adverse determination in accordance with KRS 304.17A-623(1);

3. Instructions for initiating an external review in the internal appeal decision letter upholding an adverse determination, including:

a. Whether the appeal shall [must] be in writing;

b. How to complete a necessary form [any forms], including a medical records release form or [a] written authorization of representation;

c. Applicable time frames;

d. The position and telephone [phone] number of a contact person who can provide additional information about an external review; and

e. Additional [Any other required] documentation that may be necessary to initiate the external review; and

4. The right of a covered person to request an external review within sixty (60) days of receiving notice [from an insurer] that, pursuant to KRS 304.17A-617(3), the insurer has elected [not to provide coverage and] to afford an opportunity for external review;

(b) Allow a covered person, authorized person, or provider acting on behalf of and with the consent of a covered person, to submit an oral request, followed [up] by a brief [an abbreviated] written request, for an expedited external review;

(c) Provide the following information relating to an external

review in the policy or certificate of coverage issued to a covered person and upon request:

1. The circumstances under which [whereby] the following types of external review shall be provided:

a. Nonexpedited external review in accordance with KRS 304.17A-623(3), (4) and (6); and

b. Expedited external review in accordance with KRS 304.17A-623(10), (11) and (12);

2. The filing fee for requesting an external review in accordance with KRS 304.17A-623(5);

3. Notice that the cost off[or] an external review by an independent review entity shall be paid by the insurer in accordance with KRS 304.17A-625(5);

4. The procedure for submitting:

a. An oral request followed up by a brief [an abbreviated] written request, or a written request for an expedited external review;

b. A written request for a nonexpedited external review; and

c. [The completion of] Any specific forms required by the insurer to initiate an external review, including a written authorization of personal representation or a consent to release medical records [release consent] form;

5. The time frame for:

a. Submitting a request for external review in accordance with KRS 304.17A-623(4);

b. Rendering a decision by an independent review entity in accordance with KRS 304.17A-623(12) and (13); and

c. Implementation of [Compliance of an insurer with] a decision of the independent review entity in accordance with KRS 304.17A-625(11) through (13);

6. [The telephone number and position of a contact person of the insurer who may provide information relating to an external review;

7.] A statement relating to the confidential treatment of medical records and information relating to the external review; and

7. [8.] A statement of the availability [and a description] of a complaint process through the department [office] relating to:

a. A covered person's right to an external review in accordance with KRS 304.17A-623(8); and

b. The action of an independent review entity in accordance with KRS 304.17A-625(16);

(d) If an external review is requested by an authorized person or provider acting on behalf of a covered person, obtain the:

1. Written authorization of representation; and

2. Consent to release medical records to the independent review entity;

(e) Determine if [Make a determination whether] an external review is warranted in accordance with KRS 304.17A-623(3) and (10), and notify the person who requested the external review of its [requester of that] determination within the following time periods:

1. For expedited reviews, within twenty-four (24) hours of receipt of the request, pursuant to [within sufficient time to comply with] KRS 304.17A-623(11); or

2. For nonexpedited reviews, within five (5) business days of receipt of the request;

(f) Upon a determination that an expedited external review is warranted and [promptly]:

1. By telephone, request acceptance of [Request] assignment of the external review by [to] an independent review entity, which was selected pursuant to KRS 304.17A-623(7) [consecutive rotation basis] from a list of certified independent review entities maintained [provided] by the department at http://insurance.ky.gov [office]; and

2. Notify the independent review entity by telephone that [the insurer shall forward] the following documents shall be forwarded to the independent review entity [within twenty-four (24) hours of receipt of the request] in accordance with KRS 304.17A-623(11):

a. The written consent [Consent] of the covered person authorizing release of [all necessary] medical records as required by KRS 304.17A-623(4);

b. Information to be taken into account as required by KRS 304.17A-625(1)(a); and

c. A completed External Review Information Face Sheet, HIPMC-IRE-6, incorporated by reference in 806 KAR

17:005[(07/04)];

(g) Upon a determination that a nonexpedited external review is warranted:

1. By telephone, request acceptance of [Request] assignment of the external review by [telephone to] an independent review entity which was selected pursuant to KRS 304.17A-623(7) [on a consecutive rotation basis] from the [a] list of certified independent review entities as identified in paragraph (f)1 of this subsection [provided by the office]; and

2. Within three (3) business days of assignment, deliver to the independent review entity the documentation as identified in paragraph (f)2a through c of this subsection:

a. Consent of the covered person authorizing release of all necessary medical records as required by KRS 304.17A-623(4);

b. Information to be taken into account as required by KRS 304.17A-625(1)(a); and

c. A completed External Review Information Face Sheet, HIPMC-IRE-6-(07/04);

(h) Upon assignment of an external [independent] review [entity], complete and send to the department [office] an Assignment of External Review [Independent Review Entity Form], HIPMC-IRE-2 form, incorporated by reference in 806 KAR 17:005 within [(07/04):

1. Within] one (1) business day [for an expedited external review; or

2. Within three (3) business days for a nonexpedited external review];

(i) Upon receipt of new clinical information submitted pursuant to KRS 304.17A-623(6)(b):

1. Immediately send a copy of the new clinical information as applicable to the:

a. Covered person or authorized person;

b. Provider; and

c. Independent review entity;

2. Consider reversal of the internal appeal decision based upon the new clinical information; and

3. If the internal appeal decision is reversed:

a. Provide written notice of the reversal as applicable to the:

(i) Covered person or authorized person;

(ii) Provider;

(iii) Independent review entity; and

(iv) Office; and

b. Pay the fee in accordance with Section 3(18)(b) of this administrative regulation;

(j) Upon receipt of a decision relating to external review from an independent review entity, implement the decision in accordance with KRS 304.17A-625(11) through (13);

(k) Upon receipt of an invoice relating to an external review [itemized statement of services rendered and costs], pay the independent review entity within thirty (30) days;

(l) [(b)] Maintain a written record of each external review for a period of not less than five (5) years pursuant to 806 KAR 2:070, Section 1; and

(m) Upon written notice of termination of an independent review entity pursuant to Section 3(19)(a) or (c) of this administrative regulation, reassign an external review in accordance with paragraphs (f) and (g) of this subsection.

(n) Provide a copy of the covered person's health insurance policy to the independent review entity.]

(2)(a) If a request for external review is denied by an insurer, [:

(a) written notification shall be provided by the insurer to the person requesting the external review, which [and] shall include:

1. The date the request for external review was received by the insurer;

2. A statement relating to the nature of the request;

3. The rationale of the insurer for denying the request;

4. A statement relating to the availability of review by the department [office] if a dispute arises regarding the right to external review;

5. The toll-free telephone number of the department [office]; and

6. The name and telephone number of a contact person who shall provide information relating to the denial of the request.

(b) Upon request by the department [office], the insurer shall provide:

1. A copy of the written notification described in paragraph (a) of this subsection; and

2. Information or documentation that the insurer relied upon to deny the request for external review [Additional information deemed necessary by the office].

Section 3. Requirements of an Independent Review Entity. An independent review entity shall:

(1) Accept a request for assignment unless:

(a) A conflict of interest exists;

(b) Confidentiality issues exist; or

(c) Due to circumstances beyond the control of the independent review entity, an appropriate reviewer becomes unavailable.

(2) Upon receipt of a request for assignment from an insurer:

(a) Determine if a condition of subsection (1)(a) through (c) of this section exists [whether a conflict of interest exists, confidentiality requirements of an insurer can be met and an appropriate reviewer is available]; and

(b) Within twenty-four (24) hours of receipt of a request for assignment:

1. Immediately provide verbal notification, followed by written notification to the [an] insurer and department [the office] of the rejection of an assignment if a condition of subsection (1)(a) through (c) of this section exists; or:

a. A conflict of interest exists;

b. Confidentiality requirements of an insurer cannot be met; or

c. Due to circumstances beyond the control of the independent review entity, an appropriate reviewer becomes unavailable].

2. [Within twenty-four (24) hours of receipt of the request for assignment,] Provide written notification to an insurer of the acceptance of an assignment [if:

a. No conflict of interest exists;

b. Confidentiality requirements of an insurer can be met; and

c. An appropriate reviewer is available]; and

(c) [(b)] Maintain a written record of:

1. Whether the external review relates to an adverse determination or [a] coverage denial, which requires resolution of a medical issue;

2. The specific question or issue, as identified by the independent review entity, to be resolved by the external review; and

3. Whether the external review is expedited or nonexpedited;

(3) For each external review, obtain and maintain [on file] a signed statement of a reviewer that the reviewer [he] has no conflict of interest;

(4) Not limit the basis of an external review decision to the standards, criteria, and clinical rationale used by the insurer to make its decision pursuant to KRS 304.17A-625(1), (2), (7). [Upon the receipt of new clinical information from a covered person, authorized person, or provider acting on behalf of and with the consent of a covered person, immediately send a copy of the new clinical information to the following, as applicable:

(a) Covered person or authorized person;

(b) Provider; and

(c) Insurer];

(5) Have a reviewer with expertise in:

(a) Health insurance benefits and contracts, [and] who shall serve as a reviewer with [in addition to] a health care professional reviewer, in an external review of a coverage denial which requires the resolution of a medical issue in accordance with KRS 304.17A-617(3)(d); and

(b) Health care [and] who shall:

1. Conduct an external review of a coverage denial which requires resolution of a medical issue and an adverse determination; and

2. Meet the following requirements:

a. Hold active licensure in a state of the United States;

b. Have recent experience or familiarity with current body of knowledge and applicable specialty or subspecialty practice;

c. Have at least five (5) years of experience in the specialty or subspecialty of the external review;

d. Hold current board certification by:

(i) The American Board of Medical Specialties if the reviewer is a medical doctor;

(ii) The American Osteopathic Association if the reviewer is a

doctor of osteopathic medicine;

(iii) The American Board of Podiatric Surgery if the reviewer is a doctor of podiatric medicine; or

(iv) Other recognized health professional board pursuant to board in accordance with KRS 304.17A-627;

(6) Establish criteria in accordance with KRS 304.17A-627 for:

(a) Selection of a qualified reviewer, including the initial verification and reverification every three (3) years of credentials of the reviewer;

(b) Ensuring that an appropriate;

1. Reviewer performs the external review; and

2. ~~[(c) Ensuring that an appropriate]~~ Number of reviewers are used for the external review; and

~~[(c)]~~(d) Ensuring that at least one (1) reviewer qualified in each medical specialty and subspecialty is available for external review;

(7) Have a medical director or clinical director with professional postresidency experience in direct patient care who shall:

(a) Hold a current license to practice medicine in a state of the United States;

(b) Provide guidance for the medical aspects of the external review process; and

(c) Oversee the medical aspects of the:

1. Quality management program; and

2. ~~[(d) Oversee the medical aspects of the]~~ Reviewer credentialing program;

(8) Establish and implement criteria for determination of the need for a time extension pursuant to of:

~~(a) Twenty-four (24) hours to render a decision in an expedited external review in accordance with~~ KRS 304.17A-623(12) and ~~(13)]~~; and

~~(b) Fourteen (14) calendar days to render a decision in a non-expedited external review in accordance with KRS 304.17A-623(13)]~~;

(9) Provide written notification of a decision as required by KRS 304.17A-625(6), which shall include the:

(a) Title, professional license number, state of licensure and specialty or subspecialty certifications, if any, of the reviewer;

(b) Date the decision was rendered; and

(c) A statement that:

1. The decision shall be final and binding on the insurer;

2. If dissatisfied with the decision, a comment, question, or complaint may, ~~and that any comments, questions, or complaints shall~~ be submitted in writing to the department ~~office~~;

(10) Within two (2) business days of rendering a decision, provide ~~Provide~~ written notification of the decision to the:

(a) ~~The~~ Covered person or authorized person, treating provider, and insurer ~~within two (2) business days of making the decision~~; and

(b) Department ~~The office~~ by:

1. Copying the department ~~office~~ on the written notification to the covered person; and

2. Completing an External Review Decision Notification Form, HIPMC-IRE-3, incorporated by reference in 806 KAR 17:005(07/04), ~~within two (2) business days of rendering a decision~~;

(11) Establish written policies and procedures for maintenance and the confidential treatment of external review records in accordance with KRS 304.17A-623(9), 806 KAR 3:210, 806 KAR 3:220 and 806 KAR 3:230 ~~applicable state and federal law~~;

(12) Maintain a written record of an external review for a minimum of five (5) years in accordance with 806 KAR 2:070, which shall include, as applicable:

(a) All documentation relating to the external review pursuant to KRS 304.17A-625(1) ~~(a)]~~ 304.17A-625(4)];

(b) The independent review entity's decision regarding each issue identified in the external review request;

(c) The name, credentials, and specialty or subspecialty of the reviewer;

(d) Medical records ~~evidence~~ and information considered during the review;

(e) References to any medical literature, ~~or~~ research data, or national clinical criteria upon which the independent review entity's decision was based;

(f) A copy of the covered person's health benefit plan ~~relevant~~

~~policy language of the insurer, including any relevant contractual definition of medical necessity~~;

(g) A copy of the adverse determination or coverage denial, which requires resolution of a medical issue, and the internal appeal decision; and

(h) A copy of all correspondence and communication between the independent review entity, ~~the~~ reviewer and any other person regarding the external review, including a copy of the final external review decision letter ~~letters~~;

(13) Provide toll-free telephone access that:

(a) Operates at a minimum from 9 a.m. until 5 p.m. of each business day in each time zone ~~if~~ where the services under review are in dispute; and

(b) Allows for:

1. Receiving after-hours requests for external review; and

2. Acting upon ~~on~~ expedited external review requests in accordance with KRS 304.17A-623(12);

(14) If an external review function, or any portion of this function, is delegated or subcontracted to another person or organization, submit to the department:

(a) Policies and procedures relating to oversight activities to ensure compliance with requirements of an independent review entity as established in KRS 304.17A-623 and 304.17A-625, and this section; and

(b) A copy of the delegation or subcontract agreement ~~whereby the external review function is delegated or subcontracted~~;

(15) Establish and maintain a written quality assurance program in accordance KRS 304.17A-627, which shall be made available to the public upon request and shall include a written plan, which addresses:

(a) Scope and objectives;

(b) Program organization;

(c) Monitoring and oversight mechanisms; and

(d) Evaluation and organizational improvement of external review activities, including:

1. Objectives and approaches used in the monitoring and evaluation of external review activities, including the systematic evaluation of complaints for patterns and trends;

2. The implementation of an action plan to improve or correct an identified problem; and

3. The procedures to communicate the results of an action plan to its employees and reviewers, as applicable;

(16) Submit a copy of any change to information provided on the Application for Certification of an Independent Review Entity, HIPMC-IRE-1, as incorporated by reference in 806 KAR 17:005(07/02), in writing to the department for approval. A change shall not become effective until approved by the commissioner ~~executive director~~;

(17) Submit a new application for certification if requested by the department ~~office~~ following notification of a material change in the application information as required by KRS 304.17A-627(2);

(18) Establish a fee structure, to be available upon request, for each type or level of external review, including at a minimum, a fee for:

(a) A completed external review of:

1. A coverage denial, which requires resolution of a medical issue; and

2. An adverse determination; and

(b) An incomplete external review;

(19) Immediately terminate an external review and provide notice by telephone, followed by a written notification ~~of the termination~~ to the department and, if appropriate, the insurer requesting the external review, ~~as appropriate, and the office~~ if:

(a) A conflict of interest or confidentiality issue is discovered at any time during the external review process; ~~or~~

(b) ~~A~~ If a reversal of a coverage denial or adverse determination is received in writing from the insurer; or

(c) The independent review entity or a reviewer becomes unavailable for reasons beyond the control of the independent review entity, including acts of God, natural disasters, epidemics, strikes or other labor disruptions, war, civil disturbances, riots, or complete or partial disruptions of facilities;

(20) If more than one (1) reviewer is utilized in making a decision:

(a) Render an overall decision based upon the majority decision of the reviewers; ~~or~~and

(b) If the reviewers are evenly split as to whether the recommended or requested health care service or treatment ~~shall~~should be covered, request an additional reviewer to make a binding majority decision;

(21) Implement a written policy and procedure for each aspect of an external review process, including:

(a) Processing of the request for assignment of an external review from an insurer;

(b) Receipt and maintenance of medical records and information from insurer;

(c) Ensuring access to ~~a sufficient number of~~ appropriate qualified reviewers pursuant to subsection (6) of this section;

(d) Ensuring the credentialing, selection, and notification of a reviewer who performs an~~of~~ external review;

(e) Rendering a timely decision and issuing~~issuance of~~ notification of the decision;

(f) Ongoing monitoring and evaluation of the performance of a reviewer;

(g) Monitoring and oversight of a delegated external review function, if any;

(h) Billing~~for~~ and collection of fees for external review, including:

1. Filing fee of the covered person; and

2. Cost of external review ~~for~~borne by the insurer;

(i) Collecting and reporting data;

(j) ~~Receipt and consideration of new clinical information;~~

(k) Termination of external review; and

(l) ~~Response to a request for information relating to a complaint filed with the department~~office or by others; and

(22)a Conduct annually, a~~periodic formal~~ program for training reviewers, which:

1. Provides information relating to the requirements of the Kentucky Independent External Review Program; and

2. Describes the policies and procedures of the independent review entity, as applicable; and

(b) Provide a written record of the training to the department~~office~~ upon request.

Section 4. Application Process for Certification to Perform External Reviews. (1) To perform an external review, an independent review entity shall be certified in accordance with requirements as established in KRS 304.17A-627, and this administrative regulation~~section~~.

(2) To be certified to perform an external review, an independent review entity shall:

(a) Complete and submit to the department, an~~office the~~ Application for Certification of an Independent Review Entity, HIPMC-IRE-1, incorporated by reference in 806 KAR 17:005 (07/02);

(b) Submit a fee with the application for certification as required by Section 5 of this administrative regulation~~, made payable to the Kentucky State Treasurer~~; and

(c) Enclose with the application for certification, written documentation which supports compliance with the requirements of an independent review entity as established in KRS 304.17A-627 and Section 3 of this administrative regulation.

(3) In renewing a certification, an independent review entity shall submit an application for certification~~shall be submitted~~ to the department~~office~~ at least ninety (90) days prior to expiration of the current certification.

Section 5. Fees. (1) Department~~Office~~ fees.

(a) An application for certification as an independent review entity shall be submitted with~~accompanied by a fee in the amount of~~ \$500.

(b) As identified in~~A submission of changes in information included in the application to the office in accordance with~~ KRS 304.17A-627(2), a~~or any~~ change in application information after certification~~, shall be submitted with~~accompanied by fee of fifty (50) dollars.

(c) Fees submitted to the department shall be made payable to the Kentucky State Treasurer.

(2) Independent review entity fees.

(a)1. Except for a fee which meets the criteria established in HIPMC-IRE-5, Guidelines for Approving External Review Fees, the total fee charged for an external review shall not exceed \$800; and ~~[unless justification for a higher fee is submitted to the office for approval prior to billing the insurer in the case of unusual or complicated circumstances]~~

2. The fee proposed by the independent review entity in excess of \$800 shall be submitted to the department for approval prior to billing the insurer.~~and~~

(b) The twenty-five (25) dollar filing fee to be paid by the covered person shall:

1. Be billed by the independent review entity upon assignment; or

2. Be waived if it creates a financial hardship pursuant to~~in accordance with~~ KRS 304.17A-623(5)~~. The independent review entity shall accept the following as evidence of financial hardship:~~

a. Gross income of the covered person below 200 percent of the federal poverty level based upon family size as shown by a federal income tax return for the previous year; or

b. The covered person's participation in one (1) of the following programs:

(i) National Prescription Drug Patient Assistance;

(ii) Kentucky Transitional Assistance;

(iii) Medicaid; or

(iv) Unemployment Insurance; or

3. Not be assessed if an external review is conducted following the submission of new information in accordance with KRS 304.17A-623(6)(b).

Section 6. Department~~Office~~ Review of Application for Certification or Change in~~to~~ Information Provided on the Application.

(1) Upon review~~receipt~~ of an application for certification or a change in~~to~~ information provided on the application, the department~~office~~ shall:

(a) Notify~~Inform~~ the applicant of any missing or necessary~~if supplemental~~ information; ~~is or is not needed:~~

1.(b) Identify and request that submission of the information identified in paragraph (a) of this subsection~~applicant shall submit requested information~~ within thirty (30) days; ~~or~~

2.(c) If requested information is not provided to the department~~office~~ within the timeframe established in paragraph (b) of this subsection~~thirty (30) days, the office shall~~:

1. Disapprove~~a. Deny~~ the application for certification or the change of~~to~~ information provided on the application; and

2.b. Not refund the applicable fee submitted in accordance with Section 5(1) of this administrative regulation; and

(b) Review the application and information required by KRS 304.17A-627 and Sections 2 through 11 of this administrative regulation;

(c) Make a determination whether a conflict of interest or an appearance of impropriety exists; and

(d) Approve or deny certification or a change to information provided on the application~~, or the change to information provided on the application,~~ of an independent review entity within ninety (90) days of submission.

(2) An independent review entity certification~~certificate~~ shall expire on the second anniversary of the certification date unless the certification~~it~~ is renewed by the independent review entity, which submits~~submitting~~ a new application for certification in accordance with Section 4(2) of this administrative regulation.

Section 7. Denial, Decertification, or Suspension Hearing Procedure. Upon the denial of certification, decertification, or suspension of a certification, the department~~office~~ shall:

(1) Give written notice of its action; and

(2) Advise the applicant or certificate holder that a request for a hearing may be filed in accordance with KRS 304.2-310.

Section 8. Independent Review Entity Complaint Process. (1) A copy of the complaint filed pursuant to KRS 304.17A-625(16) and a letter from the department~~office~~ requesting a written response to the complaint shall be sent to the independent review entity.

(2) Within ten (10) business days of receipt of the letter from

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~~the department, the independent review entity shall submit a written response[respond in writing to the complaint and submit] to the department, including[office within ten (10) business days of receipt of the letter from the office] the following:~~

- ~~(a) [Any]Information relating to the complaint;~~
  - ~~(b) If applicable, corrective actions to address[resolve] the complaint[, if any], including time frames for [these] actions; and~~
  - ~~(c) A mechanism to evaluate the corrective action, if applicable[any].~~
- ~~(3) Upon receipt of the written response of the independent review entity, the department[office] shall:~~
- ~~(a) If applicable, take action pursuant to[in accordance with] KRS 304.17A-625(16)[304.17A-625(3)]; and~~
  - ~~(b) Notify the complainant of the department's findings and action taken, if any.~~

Section 9. ~~Department[Office]~~ Investigations. The ~~commissioner [executive director,] may[, upon his own action,] conduct an investigation[investigations]~~ of an independent review entity pursuant to KRS 304.2-100 and 304.2-230.

Section 10. Reporting Requirements. An independent review entity shall ~~complete and[, as a condition of certification,] submit to the department[office] by March 31 of each year for the previous calendar year, the Annual Independent Review Entity Report Form[Data Reporting Requirements for Independent Review Entities], HIPMC-IRE-4, incorporated by reference in 806 KAR 17:005 [(7/00)].~~

Section 11. Cessation of ~~Participation[Operations to Perform External Review]~~. (1) Upon a decision to ~~terminate participation in the independent[cease] external review program as established in KRS 304.17A-621[operations in Kentucky], an independent review entity shall:~~

- ~~(a) Immediately notify the department[office] in writing of its decision to cease accepting new assignments; and~~
- ~~(b) Except for reasons beyond its control, submit[Submit] the following to the department for approval[office] at least thirty (30) days prior to termination[ceasing operations or as soon as practicable]:~~

~~1. Written notification of the termination[cessation of operations], including:~~

~~a.[the] Date of termination[cessation] and~~

~~b.[the] Number of pending external reviews with corresponding assignment dates; and~~

~~2. A written action plan for terminating participation[ceasing operations, which shall be approved by the office and include:~~

~~a. The projected date for rendering a decision for each external review which has not been acted upon; and~~

~~b. The projected date of submission of the Data Reporting Requirements for Independent Review Entity, HIPMC-IRE-4 (7/00)].~~

~~(2) [Upon receipt of a written notification as required in subsection (1) of this section, the office shall review and act upon the action plan of the independent review entity.~~

~~(3) Upon approval of an action plan to cease operations by the office, the independent review entity shall send written notification to insurers of the date of cessation.~~

~~(4) Annual reports required pursuant to Section 10(1) of this administrative regulation shall be submitted to the department[office] by an independent review entity within thirty (30) days of terminating participation[ceasing operations].~~

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Certification of an Independent Review Entity, HIPMC-IRE-1 (07/02)";

(b) "Assignment of Independent Review Entity Form, HIPMC-IRE-2 (07/04)";

(c) "External Review Decision Notification Form, HIPMC-IRE-3 (10/02)";

(d) "Data Reporting Requirements for Independent Review Entities, HIPMC-IRE-4 (7/00)"; and

(e) "External Review Information Face Sheet, HIPMC-IRE-6

(07/04)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the office's Internet website at <http://doi.ppr.ky.gov/kentucky/>.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: August 13, 2008

FILED WITH LRC: August 13, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2008, at 9 a.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 2008, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Melea Rivera, Health Policy Specialist, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Melea Rivera

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes insurer requirements, procedures for the certification of independent review entities, and the process for initiating and conducting external review of utilization review decisions. It also establishes disclosure requirements of the external review process to be included in the health benefit plan issued at enrollment of a covered person.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide insurers and independent review entities with notice of the requirements and the process for registering for external review utilization review decisions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 304.2-110(2), which authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.17A-629 requires the office to promulgate administrative regulations regarding the Independent External Review Program. This administrative regulation establishes insurer requirements, procedures for the certification of independent review entities, and the process for initiating and conducting external review of utilization review decisions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist insurers and independent review entities by providing the requirements and process for certification of independent review entities, and process for initiating and conducting external review of utilization review decisions.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will correct citations and definitions, change occurrences of executive director and office in accordance with EO 2008-507, revise sections to clarify language and requirements, and make other changes to comply with the drafting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correct citations and definitions, change occurrences of executive director and office in accordance with EO 2008-507, and clarify language.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 304.2-110(2), which authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. Specifically, KRS 304.17A-629 requires the office to promulgate administrative regulations regarding the Independent External Review Program. This amendment corrects citations and definitions, incorporates changes from EO 2008-507, revises sections to clarify language and requirements, and makes other changes to comply with the drafting requirements of KRS Chapter 13A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by correcting several definitions, revising sections to clarify language and requirements, and making other changes to comply with the drafting requirements of KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation may affect approximately seventeen (17) insurers and private review agents and six (6) independent review entities who currently perform external review of utilization review decisions in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Since health insurers and independent review entities are currently required to comply with the existing administrative regulation and the proposed amendments are for clarification, none of the registered entities will be expected to amend any policies and procedures already on file with the Department of Insurance. These entities will, however, be required to begin utilizing the applicable revised incorporated documents upon the effective date of the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): DOI does not anticipate that health insurers or independent review entities will incur additional costs as a result of this amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The resulting benefits are that health insurers and independent review entities will be in compliance with this administrative regulation and there will be less confusion regarding the Independent External Review Program requirements and processes.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: DOI does not anticipate any direct or indirect costs relating to the initial implementation of the amendment to this administrative regulation.

(b) On a continuing basis: DOI does not anticipate any direct or indirect costs relating to the ongoing implementation of the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to implement and enforce this administrative regulation is the existing budget of the DOI.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: DOI does not anticipate that the implementation of this amendment will require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment to an existing administrative regulation does not establish new fees, nor does this amendment directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This amendment to the administrative regulation will clarify the requirements for insurers or independent review entities to provide external review of utilization review decisions. The amendment will apply equally to all Kentucky licensed health insurers providing utilization review and independent review entities.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance (DOI) is promulgating this administrative regulation to clarify the requirements of the Independent External Review Program. This clarification will not produce a significant impact to DOI.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(2) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.17A-629 requires the office to promulgate administrative regulations regarding the Independent External Review Program.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate significant revenue for the first year for state or local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate significant revenue for subsequent years for state or local governments.

(c) How much will it cost to administer this program for the first year? DOI does not anticipate significant costs associated with the implementation of this amendment to an existing administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? DOI does not anticipate any costs associated with the implementation of this administrative regulation in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### PUBLIC PROTECTION CABINET

##### Department of Insurance

##### Division of Health Insurance Policy and Managed Care (Amendment)

#### 806 KAR 17:500. Basic health benefit plan requirements.

RELATES TO: KRS 304.12-013, 304.14-020, 304.14-120, 304.14-140, 304.14-150, 304.14-180, 304.14-210, 304.14-360, 304.14-440, 304.14-450, 304.17-030, 304.17-042, 304.17-310, 304.17-313, [304.17-316,] 304.17-3165, 304.17-319, 304.17A-005, 304.17A-096-304.17A-132[304.17A-433], 304.17A-135-304.17A-145, 304.17A-148-304.17A-149, 304.17A-155, 304.17A-171, 304.17A-250, 304.17A-258 304.17A-520, 304.17A-647, 304.18-032, 304.18-0365-304.18-037, [304.18-098,] 304.18-0985, 304.32-153, 304.32-1585, [304.32-1594,] 304.32-1595, 304.32-280, 304.38-1935 -304.38-1937, 304.38-199, 304.38-210, 29 C.F.R. 2590.702(b), 2590.711, 2590.712, 29 U.S.C. 1185, 42 U.S.C.

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300gg-4-300gg-6, 300gg-51, 300gg-52

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-096, 304.17A-097

NECESSITY, FUNCTION, AND CONFORMITY KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-096 authorizes an insurer that offers a health benefit plan to offer one (1) or more basic health benefit plans in Kentucky. EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as the head of the department. This administrative regulation establishes the requirements of a basic health benefit plan.

Section 1. Definitions. (1) "Basic health benefit plan" is defined in KRS 304.17A-005(4).

(2) "Department" means Department of Insurance.

(3) "Health benefit plan" is defined in KRS 304.17A-005(22).

(4)(3) "Insurer" is defined in KRS 304.17A-005(27).

(5)(4) "Kentucky insurance code" means the statutes referenced in KRS 304.1-010 and the administrative regulations established in KAR Title 806.

(5) "Office" is defined in KRS 304.1-050(2).

(6) "State mandated health insurance benefit" means a requirement in the Kentucky insurance code that an insurer:

(a) Provide a specified benefit;

(b) Include a specified coverage; or

(c) Pay, indemnify, or reimburse for a specified medical service.

Section 2. Disclosure Statement. A disclosure statement as required under KRS 304.17A-097 shall:

(1) Accompany or be a part of the application for coverage under a basic health benefit plan;

(2) Be included in a basic health benefit plan policy and certificate of coverage;

(3) Meet the same requirements as the minimum standards for the readability and intelligibility of insurance contracts as established in 806 KAR 14:121; and

(4) List the state mandated health insurance benefit excluded in whole or in part from coverage under the basic health benefit plan.

Section 3. State Mandated Health Insurance Benefits. A basic health benefit plan differs from a health benefit plan by the insurer electing to exclude one (1) or more of the following in whole or in part:

(1) Coverage of therapeutic foods, formulas, supplements, [amino acid modified preparations] and low-protein modified food [products] for the treatment of inborn errors of metabolism and genetic conditions [inherited metabolic diseases] as required under KRS 304.17A-258(2)[304.17A-139(4)];

(2) Coverage of the treatment of temporomandibular joint disorders and craniomandibular jaw disorders as required under KRS 304.17-319, 304.18-0365, 304.32-1585, 304.38-1937, and 806 KAR 17:090;

(3)[Coverage of mammography for a covered person diagnosed with breast disease as required under KRS 304.17-316(2)(b), 304.17A-133, 304.18-098, 304.32-1591, and 304.38-1935;

(4) Coverage of the treatment of breast cancer by high-dose chemotherapy with autologous bone marrow transplantation or stem cell transplantation as required under KRS 304.17-3165, 304.17A-135, 304.18-0985, 304.32-1595, and 304.38-1936;

(4)(5) Coverage of the treatment of human immunodeficiency virus infections as required under KRS 304.12-013(5);

(5)(6) Coverage of cochlear implants as required under KRS 304.17A-131;

(6)(7) Coverage of the treatment of autism in children as required under KRS 304.17A-143, and 806 KAR 17:460;

(7)(8) Coverage of telehealth services as required under KRS 304.17A-138 and 806 KAR 17:270;

(8)(9) Coverage of anesthesia and hospital or facility charges in connection with dental procedures as required under KRS 304.17A-149 and 806 KAR 17:095;

(9) [(10)] Coverage of hearing aids and related services as required under KRS 304.17A-132;

(10)(11) Coverage for dependents as required under KRS 304.17-310(1) and (2)[304.17-340]; or

(11)(12) Coverage of a second opinion as required under KRS 304.17A-520(4).

Section 4. Basic Health Benefit Plan Requirements. (1) Except for the exclusion of a state mandated health insurance benefit as established under KRS 304.17A-096, a basic health benefit plan shall comply with the applicable requirements of a health benefit plan as established under KRS Chapter 304, subtitles 12, 14, 17, 17A, 18, 32, and 38 and 806 KAR Chapters 12, 14, 17, 18, 32, and 38.

(2) A basic health benefit plan shall include a health insurance benefit as mandated under federal law pursuant to KRS 304.17A-096, including a benefit for the following:

(a) Women's health and cancer as identified in 29 U.S.C. 1185b, 42 U.S.C. 300gg-6, or 42 U.S.C. 300gg-52;

(b) Parity in the application of limits to mental health benefits as identified in 42 U.S.C. 300gg-5 and 29 C.F.R. 2590.712 for a group basic health benefit plan;

(c) Newborns' and mothers' health as identified in 29 U.S.C. 1185, 42 U.S.C. 300gg-4, 42 U.S.C. 300gg-51, or 29 C.F.R. 2590.711;

(d) Treatment of an injury that results from an act of domestic violence or a medical condition as identified in 29 C.F.R. 2590.702(b)(2)(iii); and

(e) Nondiscrimination due to genetic information as identified in 29 C.F.R. 2590.702(b)(1) and 2590.702(b)(2)(i)(B).

(3) A basic health benefit plan shall be marketed, distributed, and issued by an insurer in the same manner as a health benefit plan.

Section 5. Annual Reporting Requirements. An insurer offering a basic health benefit plan shall report to the department[office] annually by April 1, on the form HIPMC-BHP-1, Basic Health Benefit Plan Annual Report, incorporated by reference in 806 KAR 17:005, the following information relating to a basic health benefit plan:

(1) Total premium by product type and market segment;

(2) Total enrollment by product type, market segment, and county; and

(3) Total number of individuals not covered under health insurance for a period of at least one (1) year prior to coverage under a basic health benefit plan.

SHARON CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 29, 2008

FILED WITH LRC: August 13, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2008, at 9 a.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 2008, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Melea Rivera, Health Policy Specialist, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melea Rivera

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements of a basic health benefit plan.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide insurers with notice of the requirements for offering a basic health benefit plan, including the identification of health benefits that may be excluded and the form of disclosure for individuals to receive adequate notice of a basic health benefit plan coverage limitations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 304.2-110(2), which authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. Specifically, KRS 304.17A-096 authorizes an insurer that offers a health benefit plan to offer a basic health benefit plan, which excludes state mandated health insurance benefits. This administrative regulation establishes the requirements of a basic health benefit plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist insurers by providing the requirements for offering a basic health benefit plan, including the identification of health benefits that may be excluded and the form of disclosure in order for individuals to receive adequate notice of coverage limitations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will correct several definitions, change occurrences of executive director and office in accordance with EO 2008-507, revise Section 3 to conform with changes to state mandated benefits from the 2008 legislative session, including Ky. Acts ch. 107, 119, and 169, and make other changes to comply with the drafting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correct citations and implement changes from the 2008 legislative session, which are more specifically identified in the response to (2)(a) above.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 304.2-110(2), which authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. Specifically, KRS 304.17A-096 authorizes insurers to offer a basic health benefit plan. This amendment corrects citations definitions, incorporates changes from EO 2008-507, revises Section 3 to conform with changes to state mandated benefits from the 2008 legislative session, and makes other changes to comply with the drafting requirements of KRS Chapter 13A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by correcting several definitions, revising Section 3 to conform with changes to state mandated benefits from the 2008 legislative session, and making other technical changes to comply with drafting requirements of KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation may affect approximately eighteen (18) health insurers who have filed and received approval by the Kentucky Department of Insurance (DOI) for basic health benefit plans rates and forms. Additionally, the regulation may affect the reported 4,225 individuals covered under basic health benefit plans at renewal.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified

in question (3) will have to take to comply with this administrative regulation or amendment: Since health insurers are currently required to comply with the existing administrative regulation, limited impact on health insurers offering basic health benefit plans is expected. However, health insurers will be required to revise any basic health benefit plans that conflict with the amendment. The 4,225 individuals, who are currently covered under a basic health plan, as reported by insurers, will not be required to take any action to comply with this amendment. According to the filings received by the department, few changes, if any, will be made to these individuals' plans at renewal.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): DOI requested comments from insurers that might be impacted by this regulation, as well as an estimate of any initial and ongoing costs associated with the implementation of the proposed amendment. The insurers neither offered any comments, nor provided cost estimates; therefore DOI does not anticipate that health insurers will incur significant additional costs as a result of this amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The resulting benefits are that health insurers will be in compliance with this administrative regulation and there will be less confusion regarding the interpretation of state or federal benefits that may be excluded under a basic health benefit plan.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: DOI does not anticipate any direct or indirect costs relating to the initial implementation of the amendment to this administrative regulation.

(b) On a continuing basis: DOI does not anticipate any direct or indirect costs relating to the ongoing implementation of the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to implement and enforce this administrative regulation is the existing budget of the DOI.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: DOI does not anticipate that the implementation of this amendment will require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation neither establishes fees, nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? No. This amendment to the administrative regulation will clarify the requirements of a basic health benefit plan and provide additional statutory references. The amendment will apply equally to all Kentucky licensed health insurers offering basic health benefit plans.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance (DOI) is promulgating this administrative regulation to clarify the requirements of a basic health benefit plan. This clarification will not produce a significant impact to DOI.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. RS 304.2-110(2) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.17A-096 authorizes insurers to offer one (1) or more basic health benefits plans in Kentucky. This administrative regulation establishes the requirements of a basic health benefit plan.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency



(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the first year for state or local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for subsequent years for state or local governments.

(c) How much will it cost to administer this program for the first year? DOI does not anticipate significant costs associated with the implementation of this amendment to an existing administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? DOI does not anticipate any costs associated with the implementation of this administrative regulation in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**PUBLIC PROTECTION CABINET  
Department of Insurance  
Division of Kentucky Access  
(Amendment)**

**806 KAR 17:540. ICARE Program high-cost conditions.**

RELATES TO: 2008 Ky Acts ch. 127, Part XII, secs. 1-8, 12 [2006 Ky Acts ch. 252, Part XXIII, secs. 1-8, 13, 22]

STATUTORY AUTHORITY: KRS 304.2-110(1), 2008 Ky Acts ch. 127, Part XII, sec. 2(3)(b) [2006 Ky Acts ch. 252, Part XXIII, sec. 2(3)(b)]

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 304.2-110(1) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. 2008 Ky Acts ch. 127, Part XII, sec. 2(3)(b) [2006 Ky Acts ch. 252, Part XXIII, sec. 2(3)(b)] requires the office to establish by administrative regulation a list of high-cost conditions for the ICARE Program. This administrative regulation establishes a list of high-cost conditions representing the top twenty (20) high-cost conditions in the small group market.

Section 1. Definitions. (1) "Eligible employee" is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(3) [2006 Ky Acts ch. 252, Part XXIII, sec. 1(3)].

(2) "High-cost condition" is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(5) [2006 Ky Acts ch. 252, Part XXIII, sec. 1(5)].

(3) "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2008 Ky Acts ch. 127, Part XII, sec. 2(1) [2006 Ky Acts ch. 252, Part XXIII, sec. 2(1)].

Section 2. List of High-Cost Conditions. An ICARE Program high-cost condition shall:

(1) Be diagnosed or treated by a health care provider legally authorized to diagnose the condition within the past five (5) years and documented in the medical record of an eligible employee; and

(2) Include one (1) of the following medical conditions:

(a) Anoxic brain injury, which shall be limited to anoxic brain injury associated with:

1. Drowning and nonfatal submersion; or
  2. Intrauterine hypoxia and birth asphyxia;
- (b) Ascites;

(c) Back disorder, which shall be limited to:

1. Lumbar or Lumbosacral disc degeneration; or
2. Lumbar disc displacement;

(d) Brain tumor;

(e) Burn, which shall be limited to full-thickness skin loss involving ten (10) percent or more of body surface;

(f) Cancer, which shall be limited to:

1. Ewing's sarcoma;
2. Hodgkin's disease;
3. Leukemia;
4. Lymphoid leukemia;
5. Malignant neoplasm of breast;
6. Metastatic cancer;
7. Myeloid leukemia; or
8. Primary cancer;

(g) Cirrhosis of the liver;

(h) Endocrine disorder, which shall be limited to:

1. Insulin dependent diabetes mellitus; or
2. Enzyme deficiency disorder which shall be limited to inborn errors of metabolism [an inherited metabolic disease as established in KRS 205.560(1)(e)];

(i) Heart condition, which shall be limited to:

1. Acute myocardial infarction;
2. Angina pectoris;
3. Cardiac valve disorder;
4. Cardiomyopathy;
5. Congenital cardiac anomaly;
6. Coronary insufficiency;
7. Coronary occlusion;
8. Heart failure;
9. Injury to heart or lung;
10. Ischemic heart disease;
11. Pulmonary atresia;
12. Pulmonary hypertension; or
13. Status post open-heart surgery;

(j) Hemophilia,

(k) Hypersomnia with sleep apnea;

(l) Lung condition, which shall be limited to:

1. Chronic airway obstruction;
2. Disease of the lung; or
3. Post inflammatory pulmonary fibrosis;

(m) Kidney condition, which shall be limited to:

1. Chronic renal failure;
  2. End stage renal disease; or
  3. Polycystic kidney;
- (n) Morbid obesity;
- (o) Multiple sclerosis;
- (p) Organ or tissue replaced by transplant;
- (q) Psychotic disorder;
- (r) Rhabdomyolysis;
- (s) Stroke; or
- (t) Trauma, which shall be limited to:
1. Fracture or complete lesion of cord; or
  2. Multiple trauma.

JOHN BURKHOLDER, Acting Commissioner

ROBERT VANCE, Secretary

APPROVED BY AGENCY: July 2, 2008

FILED WITH LRC: July 15, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2008, at 9 a.m., (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 17, 2008, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September

30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the list of high-cost medical conditions for the ICARE Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a list of 20 high-cost conditions that will be used to qualify an eligible small business employer for an ICARE Program health care incentive payment if the employer has an eligible employee who has been diagnosed with or treated for 1 of the high-cost conditions within 5 years.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 406, Section XII continues the ICARE Program as a pilot program for the next two fiscal years and requires the Department to establish a list of high-cost conditions for the ICARE Program. This administrative regulation establishes a list of high-cost conditions for the ICARE Program based on information received from ICARE Program participating insurers offering health benefit plans in the small group market.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the list of ICARE Program high-cost conditions.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will update statutory references and agency names.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reference the appropriate statutory authority for the ICARE Program, which was re-established in HB 406, Part XII, during the 2008 Regular Session. This amendment is also necessary to update agency names as a result of the reorganization effective with Executive Order 2008-507.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 406, Section XII continues the ICARE Program as a pilot program for the next two fiscal years and requires the Department to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will primarily provide the correct references to the statutory authority for the ICARE Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendments to this existing administrative regulation are technical in nature and should not impact the ICARE applicants, members or the health insurance agents assisting in the application process.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: These amendments are technical in nature and do not require implementation by regulated entities.

(b) In complying with this administrative regulation or amend-

ment, how much will it cost each of the entities identified in question (3): These amendments are technical in nature and will not have a cost impact.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These amendments are technical in nature and will not require specific compliance.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There should be no additional cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: If any costs arise, the budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment. There will be no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies offering life insurance in Kentucky.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 2008 Ky Acts ch. 127, Part XII, secs. 1-8, 12

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### PUBLIC PROTECTION CABINET Department of Insurance Division of Kentucky Access (Amendment)

**806 KAR 17:545. ICARE Program employer eligibility, application process, and requirements.**

RELATES TO: 2008 Ky Acts ch. 127, Part XII, secs. 1-8,

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12[2006 Ky Acts ch. 252, Part XXIII, secs. 1-8, 13, 22]

STATUTORY AUTHORITY: KRS 304.2-110(1), 2008 Ky Acts ch. 127, Part XII, secs. 1(2), 1(3), 2(5)[2006 Ky Acts ch. 252, Part XXIII, secs. 1(2) and 1(3), 2(5)]

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 304.2-110(1) authorizes the executive director of insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. 2008 Ky Acts ch. 127, Part XII, sec. 1(2) and (3)[2006 Ky Acts ch. 252, Part XXIII, secs. 1(2) and (3)] require the office to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2008 Ky Acts ch. 127, Part XII, sec. 2(5)[2006 Ky Acts ch. 252, Part XXIII, sec. 2(5)] requires the office to establish guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-020(1).

(2) "Complete ICARE Program application" means the ICARE Program application, ICARE-APP-1, with all fields completed and all required attachments, including:

(a) Documentation verifying that the employer group's average annual salary is 300% of the federal poverty level or below, which may include the employer's:

1. Quarterly unemployment tax statement; or
2. Payroll register;

(b) Documentation supporting coverage of the employer group under a qualified health benefit plan;

(c) A copy of the employer's application or renewal information for coverage to the insurer;

(d) Employee ICARE Program high-cost condition certification, if applicable; and

(e) Any additional attachments, if applicable.

(3) "Department" means the Department of Insurance.

(4) "Eligible employee" is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(3)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(3)].

(5)[(4)] "Eligible employer" is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(2)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(2)].

(6)[(5)] "Federal poverty level" means a standard of income for an individual who resides in one (1) of the forty-eight (48) contiguous states which:

(a) Is issued annually by the United States Department of Health and Human Services;

(b) Is published annually in the Federal Register; and

(c) Accounts for the previous year's price increases as measured by the consumer price index.

(7)[(6)] "Full time employee" means an employee who works at least twenty-five (25) hours per week.

(8)[(7)] "Full time equivalent" means a number that equals the total hours worked per week by part time employees divided by twenty-five (25).

(9)[(8)] "Health benefit plan" is defined in KRS 304.17A-005(22).

(10)[(9)] "Health care incentive payment" means a payment as established in 2008 Ky Acts ch. 127, Part XII, secs. 2(3) and 4(1)[2006 Ky Acts ch. 252, Part XXIII, secs. 2(3) and 4(1)].

(11)[(10)] "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2008 Ky Acts ch. 127, Part XII, sec. 2(1)[2006 Ky Acts ch. 252, Part XXIII, sec. 2(1)].

(12)[(11)] "ICARE Program high-cost condition" means a high-cost condition as:

(a) Defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(5)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(5)]; and

(b) Established in 806 KAR 17:540.

(13)[(12)] "ICARE Program participating employer" means an eligible employer who is enrolled in the ICARE Program.

(14)[(13)] "ICARE Program participating insurer" is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(6)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(6)].

(15)[(14)] "ICARE Program year" means a one (1) year period of time beginning on an eligible employer's enrollment date in the ICARE Program.

(16)[(15)] "Insurer" is defined in KRS 304.17A-005(27). [(16) "Office" is defined in and KRS 304.1-050(2).]

(17) "Qualified health benefit plan" is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(8)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(8)].

Section 2. Employer Eligibility. (1) To determine the number of employees of an employer pursuant to 2008 Ky Acts ch. 127, Part XII, sec. 1(2)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(2)], the department[office] shall consider:

(a) Full time employees; and

(b) Full time equivalents rounded to the nearest whole number.

(2) The average annual salary of the employer group shall not exceed 300% of the most current federal poverty level for a family of three (3). To determine the average annual salary of the employer group pursuant to 2008 Ky Acts ch. 127, Part XII, sec. 2(4)[2006 Ky Acts ch. 252, Part XXIII, sec. 2(4)], the department[office] shall:

(a) Calculate the sum of the annual gross salaries of all eligible employees, excluding the salary of any employee:

1. With an ownership interest in the business;

2. Who is a Medicare-eligible employee;

3. Who has attained age sixty-five (65); or

4. Who does not meet eligibility requirements for participation in the employer-sponsored health benefit plan established by the employer and insurer; and

(b) Divide the sum calculated in paragraph (a) of this subsection by the total number of employees whose salaries were used in the calculation established in paragraph (a) of this subsection.

(3) An eligible employer shall pay fifty (50) percent or more of the average single premium cost of qualified health benefit plan coverage for each eligible employee.

(4) An eligible employer shall have at least one (1) eligible employee who is not an owner of the business.

Section 3. Application for Participation in the ICARE Program.

(1) An eligible employer who desires to participate in the ICARE Program and:

(a) Who has not provided employer-sponsored health benefit plan coverage to its employees within the previous twelve (12) months, shall submit a complete ICARE Program application within 120 days of receiving notice of approval for coverage under a qualified health benefit plan;

(b) Who currently provides employer-sponsored health benefit plan coverage to its employees under a qualified health benefit plan and has an eligible employee with a diagnosed ICARE high-cost condition, shall submit a complete ICARE Program application at any time; or

(c) Who has been terminated from the ICARE Program for any reason other than material misrepresentation or fraud, shall submit a complete ICARE Program application no earlier than sixty (60) days prior to the anniversary of the employer's initial enrollment in the ICARE Program.

(2) A Kentucky licensed agent acting on behalf of an ICARE Program participating insurer shall assist in the submission of an application for the ICARE Program by:

(a) Verifying that the employer has completed and submitted all required information to support eligibility for the ICARE Program;

(b) Completing section 3 of the ICARE Program application of the employer; and

(c) If applicable:

1. Collecting employee ICARE Program high-cost condition certifications from employees, as identified in the ICARE Program application; and

2. Protecting personal health information as established in

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subparagraph 1 of this paragraph pursuant to 806 KAR 3:210 through 806 KAR 3:230.

Section 4. Application Process. (1) Within sixty (60) days of receiving a complete ICARE Program application, the department[office] shall make a determination of the employer's eligibility for the ICARE Program and provide written or electronic notification to the employer regarding eligibility.

(2) Within sixty (60) days of receiving an incomplete ICARE Program application, the department[office] shall provide the employer with a written or electronic notification of:

(a) Ineligibility of the employer, if the application includes information which makes an employer ineligible for the ICARE Program; or

(b) Any information that is missing or incomplete.

(3) If an employer receives notification of ineligibility for the ICARE Program, the employer may submit within thirty (30) days from the date of the notification a written request to the department[office] for reconsideration in accordance with Section 8 of this administrative regulation.

(4) Upon approval of ICARE Program eligibility by the department[office] under a program eligibility category as established in 2008 Ky Acts ch. 127, Part XII, sec. 2(3)[2006 Ky Acts ch. 252, Part XXIII, sec. 2(3)], an eligible employer shall not be allowed to reapply to the ICARE Program under a different program eligibility category.

Section 5. Changes in Application Information. An ICARE Program participating employer shall provide written notification of any change in ICARE Program application information to the department[office] within thirty (30) days of the date of the change.

Section 6. Renewal of ICARE Program Participation. (1) At least sixty (60) days prior to the ICARE Program year renewal date, the department[office] shall send a renewal notification to an ICARE Program participating employer.

(2) At least thirty (30) days prior to the ICARE Program year renewal date, an ICARE Program participating employer who desires continued participation in the ICARE Program shall submit to the department[office]:

(a) A written request for renewal of ICARE Program participation; and

(b) Documentation to support eligibility as established in Section 2 of this administrative regulation and 2008 Ky Acts ch. 127, Part XII, secs. 1 through 8[2006 Ky Acts ch. 252, Part XXIII, secs. 1 through 8].

(3) Within thirty (30) days of receiving a request for renewal, the department[office] shall make a determination of continued eligibility for a subsequent ICARE Program year and notify the ICARE Program participating employer of the determination.

Section 7. Termination of ICARE Program Participation. (1) An ICARE Program participating employer shall be terminated from participation in the ICARE Program if:

(a) The department[office] determines that the employer ceases to meet an eligibility requirement as established in Section 2 of this administrative regulation or 2008 Ky Acts ch. 127, Part XII, secs. 1 through 8[2006 Ky Acts ch. 252, Part XXIII, secs. 1 through 8];

1. Upon completion of an annual review for the ICARE Program year reviewed; or

2. Upon review of a request for renewal of ICARE Program Participation;

(b) The employer group's qualified health benefit plan coverage is terminated or not renewed pursuant to 2008 Ky Acts ch. 127, Part XII, sec. 4(5)[2006 Ky Acts ch. 252, Part XXIII, sec. 4(5)];

(c) The employer or any employee of the employer group performs an act or practice that constitutes fraud or intentionally misrepresents a material fact in the ICARE Program application;

(d) The employer requests termination from the ICARE Program;

(e) The employer ceases business operations in Kentucky; or

(f) The employer fails to cooperate in an annual review as described in Section 10 of this administrative regulation.

(2) Prior to terminating an ICARE Program participating employer, the department[office] shall provide written notification to the employer, which shall include:

(a) The reason for termination as identified in subsection (1) of this section;

(b) The termination date, which shall be:

1. If terminated for fraud or misrepresentation, the date of the written notification; or

2. If terminated for a reason other than fraud or misrepresentation, no less than thirty (30) days from the date of the written notification; and

(c) Instructions for filing an appeal if dissatisfied with the termination.

Section 8. Reconsideration Requests and Appeals. (1) Within thirty (30) days of receiving notification of a determination of ineligibility pursuant to Section 4 or 6 of this administrative regulation or termination by the department[office] pursuant to Section 7 of this administrative regulation, an employer may request a reconsideration of the determination of ineligibility or termination in writing and shall provide the basis for reconsideration, including any new relevant information.

(2) The department[office] shall provide written notification of its determination to the employer within sixty (60) days of receipt of a request for reconsideration from an employer.

(3) Within sixty (60) days of receiving the department's[office's] determination on reconsideration, the employer may appeal by filing a written application for an administrative hearing in accordance with KRS 304.2-310.

Section 9. ICARE Program Health Care Incentive Payment. (1) If confirmation of premium payment by the ICARE Program participating employer is included in the report required by 806 KAR 17:555, Section 5(4), a health care incentive payment shall be issued to the employer for each calendar month beginning with the month of enrollment of the employer in the ICARE Program.

(2) The department[office] shall issue a health care incentive payment to an ICARE Program participating employer for each month in accordance with 2008 Ky Acts ch. 127, Part XII, sec. 4(1)[2006 Ky Acts ch. 252, Part XXIII, sec. 4(1)] for eligible employees enrolled in a qualified health benefit plan not to exceed the number of employees approved as eligible employees by the department[office] based on the employer's ICARE Program application or ICARE Program renewal.

(3) The total amount of the monthly health care incentive payment provided to an employer may vary during the ICARE Program year based upon the number of eligible employees enrolled in the qualified health benefit plan as reported by the ICARE Program participating insurer.

(4) If an ICARE Program participating employer is terminated from the ICARE Program, the employer shall not be eligible for a monthly health care incentive payment following the effective date of termination for months remaining after the termination.

(5) If an ICARE Program participating employer is terminated from the ICARE Program due to fraud or material misrepresentation, the employer shall refund to the department[office] all health care incentive payments received by the employer for the period of ineligibility determined by the department[office].

(6) Upon re-enrollment of an employer in the ICARE Program pursuant to Section 3(1)(c) of this administrative regulation, the employer shall receive a health care incentive payment amount that is equal to the health care incentive payment that the employer would have received at the time of renewal in accordance with 2008 Ky Acts ch. 127, Part XII, sec. 4(1) [2006 Ky Acts ch. 252, Part XXIII, sec. 4(1)].

Section 10. Annual Review. The department[office] may make or cause to be made an annual review of the books and records of an ICARE Program participating employer, insurer, or agent to ensure compliance with:

(1) 2008 Ky Acts ch. 127, Part XII, secs. 1 through 8[2006 Ky Acts ch. 252, Part XXIII, secs. 1 through 8], 806 KAR 17:540 and 17:555 and this administrative regulation; and

(2) The representations made by the employer on its applica-

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tion for participation in the ICARE Program.

Section 11. Response to Department[Office] Inquiry. If an employer receives an inquiry from the department[office] relating to the eligible employer's participation or application in the ICARE Program, the eligible employer shall respond within fifteen (15) business days.

Section 12. Incorporation by Reference. (1) "ICARE-APP-1" 7/2008["ICARE-APP-1", 9/2007], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department[Office] of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) Forms may also be obtained on the department[office] Web site at <http://doi.ppr.ky.gov/kentucky>.

JOHN BURKHOLDER, Acting Commissioner  
ROBERT VANCE, Secretary

APPROVED BY AGENCY: July 2, 2008

FILED WITH LRC: July 15, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2008, at 9 a.m. (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 17, 2008, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: J Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application appeals process, annual review, health care incentive payment procedures, and the eligibility criteria for employers wishing to participate in the ICARE Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with 2008 RS HB 406, Part XII in creating administrative regulations to further clarify and establish the various process for the ICARE Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 406, Section XII continues the ICARE Program as a pilot program for the next two fiscal years and requires the Department to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by further establishing eligibility requirements, the ICARE Program application, application and appeal processes, annual review and payment of health care incentives.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation corrects statutory references as a result of legislation enacted during the 2008 Regular Session and agency names as a result of EO 2008-507.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reference the appropriate statutory authority for the ICARE Program, which was re-established in HB 406, Part XII, during the 2008 Regular Session. This amendment is also necessary to update agency names as a result of the reorganization effective with EO 2008-507.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 406, Section XII continues the ICARE Program as a pilot program for the next two fiscal years and requires the Department to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will primarily provide the correct references to the statutory authority for the ICARE Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendments to this existing administrative regulation are technical in nature and should not impact the ICARE applicants, members or the health insurance agents assisting in the application process.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: These amendments are technical in nature and do not require implementation by regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): These amendments are technical in nature and will not have a cost impact.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These amendments are technical in nature and will not require specific compliance.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There should be no additional cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: If any costs arise, the budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment. There will be no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies offering life insurance in Kentucky.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including

cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 2008 Ky Acts ch. 127, Part XII, secs. 1-8, 12

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**PUBLIC PROTECTION CABINET  
Department of Insurance  
Division of Kentucky Access  
(Amendment)**

**806 KAR 17:555. ICARE Program requirements.**

RELATES TO: KRS 304.14-120, 304.14-430-304.14-450, 304.17A-095 -304.17A-0954, 2008 Ky Acts ch. 127, Part XII, secs. 1-8[2006 Ky Acts ch. 252, Part XXIII, secs. 1-8, 13, 22], 42 U.S.C. 1396e

STATUTORY AUTHORITY: KRS 304.2-110(1), 2008 Ky Acts ch. 127, Part XII, secs.2(5) and 8(2)[2006 Ky Acts ch. 252, Part XXIII, secs. 2(5) and 8(2)]

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. 2008 Ky Acts ch. 127, Part XII, sec. 2(5)[2006 Ky Acts ch. 252, Part XXIII, sec. 2(5)] requires the office to establish guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program. 2008 Ky Acts ch. 127, Part XII, sec. 8[2006 Ky Acts ch. 252, Part XXIII, sec. 8(1)] requires an insurer which offers a health benefit plan to disclose the availability of a health insurance purchasing program as authorized in 42 U.S.C. 1396e to eligible employer groups and the Insurance Coverage, Affordability and Relief to Small Employers Program. This administrative regulation establishes requirements for ICARE Program participating insurers, qualified health benefit plans, disclosure of information, data reporting, and annual review by the office.

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-020(1).

(2) "Basic health benefit plan" is defined in KRS 304.17A-

005(4).

(3) "Consumer-driven health plan" is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(1)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(1)].

(4) "Department" means the Department of Insurance.

(5) "Eligible employee" is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(3)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(3)].

(6)[(5)] "Eligible employer" is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(2)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(2)].

(7)[(6)] "Enriched health benefit plan" means a health benefit plan which:

(a) Is not a basic or consumer-driven health benefit plan; and

(b) Includes all benefits established in KRS Chapter 304 subtitle 17A.

(8)[(7)] "Health benefit plan" is defined in KRS 304.17A-005(22).

(9)[(8)] "Health care incentive payment" means a payment as established in 2008 Ky Acts ch. 127, Part XII, secs. 2(3) and 4(1)[2006 Ky Acts ch. 252, Part XXIII, sec. 4(1)].

(10)[(9)] "Health risk assessment" is defined 2008 Ky Acts ch. 127, Part XII, sec. 1(4)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(4)].

(11)[(10)] "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2008 Ky Acts ch. 127, Part XII, sec. 2(1)[2006 Ky Acts ch. 252, Part XXIII, sec. 2(1)].

(12)[(11)] "ICARE Program participating insurer" is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(6)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(6)].

(13)[(12)] "ICARE Program year" means a one (1) year period of time beginning on an employer's enrollment date in the ICARE Program.

[(13)] "Office" is defined in 2006 Ky Acts ch. 252, Part XXIII, sec. 1(7) and KRS 304.1-050(2):-]

(14) "Qualified health benefit plan" is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(8)[2006 Ky Acts ch. 252, Part XXIII, sec. 1(8)].

(15) "Small group" is defined in KRS 304.17A-005(42).

Section 2. Health Risk Assessment. An ICARE Program participating insurer shall:

(1) Within sixty (60) days of receiving notification of a newly-enrolled ICARE Program participating employer by the department[office], conduct a health risk assessment as established in 2008 Ky Acts ch. 127, Part XII, sec. 3(4)[2006 Ky Acts ch. 252, Part XXIII, sec. 3(4)] for each eligible employee of the employer; and

(2) Within sixty (60) days of conducting a health risk assessment as established in subsection (1) of this section, and pursuant to 2008 Ky Acts ch. 127, Part XII, sec. 3(4)[2006 Ky Acts ch. 252, Part XXIII, sec. 3(4)], offer the following:

(a) A wellness program;

(b) Case management services; and

(c) Disease management services.

Section 3. Qualified Health Benefit Plans. (1) All health benefit plans approved by the department[office] for use in the small group or employer-organized association market shall be deemed qualified health benefit plans.

(2) If an ICARE Program participating insurer develops a new health benefit plan or amends a previously approved health benefit plan to meet the requirements of 2008 Ky Acts ch. 127, Part XII, sec. 3(2) and (4)[2006 Ky Acts ch. 252, Part XXIII, secs. 3(2) and 3(4)], the insurer shall submit for approval by the department [office], a:

(a) Form filing for each new or amended health benefit plan in accordance with KRS 304.14-120(2), 304.14-430 through 304.14-450, and 806 KAR 14:007; and

(b) Rate filing for each new or amended health benefit plan in accordance with KRS 304.17A-095, 304.17A-0952, 304.17A-0954 and 806 KAR 17:150, as applicable.

Section 4. Requirements of Disclosure. Pursuant to 2008 Ky Acts ch. 127, Part XII, sec. 8(1)[2006 Ky Acts ch. 252, Part XXIII, sec. 8(1)], a disclosure shall:

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(1) Be distributed to an eligible employer by an insurer in written or electronic format;

(2) Include information relating to availability of the:

(a) Health Insurance Premium Payment (HIPP) Program by stating the following: "The Health Insurance Premium Payment (HIPP) Program is administered by the Department for Medicaid Services and pays for the cost of private health insurance premiums. The Program reimburses individuals or employers for private health insurance payments for individuals who are eligible for Medicaid when it is cost effective. For more information, or to see if you are eligible, contact the Department for Medicaid Services, HIPP Program, 275 East Main Street, Frankfort, Kentucky 40621."; and

(b) ICARE Program, which shall include:

1. Information relating to an eligible employer and employee;

2. Amount of initial health care incentive payment and incremental reduction in rates pursuant to 2008 Ky Acts ch. 127, Part XII, sec. 4(1)[2006 Ky Acts ch. 252, Part XXIII, sec. 4(1)];

3. Limited enrollment of eligible employers under the ICARE Program; and

4. Department[Office] Web site and toll-free telephone number of the ICARE Program; and

(3) Be submitted annually to the department[office] for review.

### Section 5. ICARE Program Data Reporting Requirements.

(1)(a) An ICARE Program participating insurer shall designate a contact person to respond to inquiries of the office relating to the ICARE Program and provide to the office the contact person's:

1. Name;

2. Telephone and fax numbers; and

3. Electronic mail address; and

(b) If the information requested in paragraph (a) of this subsection is changed, the insurer shall notify the department[office] within fifteen (15) days of the date of the change.

(2) No later than the 15th day of each month, the department[office] shall report electronically to the designated contact person of an ICARE Program participating insurer as established in subsection (1) of this section, the following information for each newly enrolled and terminated ICARE Program participating employer:

(a) The ICARE Program identification number;

(b) Name of employer group; and

(c) The ICARE Program year effective date.

(3) Each ICARE Program participating insurer shall collect the following information monthly for each ICARE Program participating employer:

(a) The ICARE Program identification number;

(b) Name of employer group;

(c) Name of the qualified health benefit plan covering eligible employees;

(d) Month of coverage;

(e) Average monthly premium of each eligible employee;

(f) Number of eligible employees covered under the qualified health benefit plan; and

(g) Termination date, if applicable.

(4) No later than the 20th day of each month, an ICARE Program participating insurer shall report to the department[office] information identified in subsection (3) of this section in a format as established in the form, ICARE Report-1.

(5) For the calendar year ending December 31, 2007, and annually thereafter, an ICARE Program participating insurer shall submit to the department[office], a report of the average annual premium of each ICARE Program participating employer. The annual report shall:

(a) Include for each ICARE Program participating employer:

1. ICARE Program identification number;

2. Name of the employer group; and

3. Average annual premium paid; and

(b) Be submitted in a format as established in the form, ICARE Report-1:

1. No later than February 1, for the previous calendar year; and

2. In an electronic or written format.

Section 6. Annual Department[Office] Review of ICARE Books and Records. The office may make or cause to be made an annual

review of the books and records of an ICARE Program participating insurer or agent to ensure compliance with:

(1) 2008 Ky Acts ch. 127, Part XII, secs. 1 through 8[2006 Ky Acts ch. 252, Part XXIII, secs. 1 through 8], 806 KAR 17:540, 806 KAR 17:545 and this administrative regulation; and

(2) The representations made by the employer on its application for participation in the ICARE Program.

Section 7. Incorporation by Reference. (1) "ICARE Report-1", 7/2008[ICARE Report-1], 12/2006], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department [Office] of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) Forms may also be obtained on the department [office] Web site at <http://doi.ppr.ky.gov/kentucky/>.

JOHN BURKHOLDER, Acting Commissioner

ROBERT VANCE, Secretary

APPROVED BY AGENCY: July 2, 2008

FILED WITH LRC: July 15, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2008, at 9 a.m. (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 17, 2008, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements of insurers participating in the ICARE Program, qualified health benefit plans, the disclosure relating to the Health Insurance Premium Payment (HIPP) Program and ICARE Program, data reporting, and annual review the Department of Insurance. Additionally, this administrative regulation establishes the form to be used by insurers for monthly and annual reporting.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements of ICARE Program participating insurers, a process for designation of qualified health benefit plans, the manner and content of required HIPP and ICARE Program disclosures, the form and content of monthly and annual reports and the annual review by the Department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 406, Section XII continues the ICARE Program as a pilot program for the next two fiscal years and requires the Department to establish guidelines for determination of preference for employer groups based upon federal poverty levels, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements and administrative guidelines for the ICARE Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by defines terms and establishes standards for the manner and content of a disclosure of the availability of the HIPP program. Additionally, this administrative regulation establishes the requirements for qualified health benefit plans, data reporting, ICARE Program participating insurers and annual review.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation corrects statutory references as a result of legislation enacted during the 2008 Regular Session and agency names as a result of EO 2008-507.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reference the appropriate statutory authority for the ICARE Program, which was re-established in HB 406, Part XII, during the 2008 Regular Session. This amendment is also necessary to update agency names as a result of the reorganization effective with EO 2008-507.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 406, Section XII continues the ICARE Program as a pilot program for the next two fiscal years and requires the Department to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will primarily provide the correct references to the statutory authority for the ICARE Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendments to this existing administrative regulation are technical in nature and should not impact the ICARE applicants, members or the health insurance agents assisting in the application process.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: These amendments are technical in nature and do not require implementation by regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): These amendments are technical in nature and will not have a cost impact.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These amendments are technical in nature and will not require specific compliance.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There should be no additional cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: If any costs arise, the budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment. There will be no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies offering life insurance in Kentucky.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 2008 Ky Acts ch. 127, Part XII, secs. 1-8, 12

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:



NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, AUGUST 15, 2008

FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(New Administrative Regulation)

**103 KAR 1:150. Electronic data match and levy procedures.**

RELATES TO: KRS 131.670 - 131.676

STATUTORY AUTHORITY: KRS 131.672(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.672(7) authorizes the Department of Revenue to promulgate an administrative regulation to establish the procedures to be followed by the Department of Revenue and Kentucky financial institutions in designing, developing, implementing and operating a data match and levy system to assist the Department of Revenue in collecting delinquent taxes and debts owed to the Commonwealth.

- Section 1. Definitions. (1) "Debt" is defined by KRS 131.670(1).  
(2) "Debtor" is defined by KRS 131.670(2).  
(3) "Delinquent taxpayer" is defined by KRS 131.670(4).  
(4) "Department" is defined by KRS 131.670(3).  
(5) "Financial Institution" is defined by KRS 131.670(5).  
(6) "Levy" is defined in KRS 131.500(10).

Section 2. Electronic Data Match and Levy Program Implementation. (1) The department or its authorized agent shall, in conjunction with financial institutions, design, develop, implement, and operate a data match system for the purpose of identifying and seizing the financial assets of delinquent taxpayers and debtors as identified by the department pursuant to KRS 131.670 - 131.676.

(2) The department or its authorized agent shall implement the data exchange. The department or its authorized agent shall have access to identifying information for a delinquent taxpayer or debtor who the department has identified to a financial institution through a data match for the purpose of levying the account of the delinquent taxpayer or debtor to pay the delinquent tax or debt.

(3) The department shall reimburse a financial institution for costs incurred for the implementation of the data match program, not to exceed \$500, unless approved by the department prior to development and installation.

Section 3. Electronic Data Match Reporting. (1) A financial institution shall:

- (a) Select a preferred matching method in the Data Matching Memorandum of Agreement;
- (b) Exchange information with the department by way of an automated data exchange system. If the financial institution demonstrates to the department that it does not have the necessary computer capabilities to exchange information by way of an automated data exchange system, the department may issue a waiver to allow the financial institution to exchange information by paper;
- (c) Submit information to the department on a quarterly basis in the format prescribed by the Financial Institution Data Match Specifications Handbook, using either the all accounts method or matched accounts method.

1. If a financial institution agrees to provide the information according to the all accounts method, the financial institution shall:

a. Submit to the department, or the department's authorized agent, within fifteen (15) days after requested by the department, data files of open accounts for the data match; and

b. Report the name, record address, Social Security number, Federal Employer Identification number, account status and other identifying information required by the department or the department's authorized agent on any account maintained by a financial institution.

2. If a financial institution agrees to provide the information according to the matched accounts method, the financial institution shall, within fifteen (15) days after submission to the financial institution by the department of an inquiry, file:

a. Match the inquiry file of delinquent taxpayers and debtors identified and provided by the department, or by the department's

authorized agent, against open accounts maintained by the financial institution; and

b. Submit a report of matched accounts to the department or its authorized agent containing the name, record address, Social Security number, Federal Employer Identification number, account status and any other identifying information required by the department or the department's authorized agent on any account maintained by the financial institution.

(d) Maintain a security process to assure that information received from the department or its authorized agent concerning a delinquent taxpayer or debtor shall:

1. Be maintained and safeguarded as confidential; and
2. Not be copied or given to any other entity without the written permission of the department, or the delinquent taxpayer or debtor; and

(e) Incur no liability for:

1. Disclosing a financial record to the department for the enforcement of a delinquent tax liability or debt of the account holder;
2. Encumbering or surrendering an asset held by a financial institution in response to a Notice of Levy, Revenue Form 12B020, incorporated by reference at 103 KAR 3:010(2)(1)(m), issued by the department, or any other action taken by a financial institution in good faith; or
3. Providing a file to the department or its authorized agent in accordance with an approved format as described by the Financial Institution Data Match Specifications Handbook.

Section 4. Levy. (1) If a financial data match occurs, a financial institution shall:

(a) Hold, encumber or surrender an account to the department upon receipt of a notice of levy;

(b) Address and send to the department or its authorized agent as designated, notices, paperwork, tapes or other electronic communication resulting from a financial institution data match program; and

(c) Submit data files to the department or its authorized agent as designated.

(2) The match of an account holder to a delinquent taxpayer or debtor record provided by the department does not constitute a levy and no account shall be held, encumbered, or surrendered to the department without a financial institution having received a notice of levy from the department.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Data Matching Memorandum of Agreement"; and
- (b) "Financial Institution Data Match Specifications Handbook", edition 11/07.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Revenue, Division of Collections, 501 High Street, 8th Floor, Frankfort, Kentucky 40620, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: August 4, 2008

FILED WITH LRC: August 14, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2008 at 11 a.m. at Room 386 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed regulation to the contact

person.

CONTACT PERSON: LeeAnne Applegate, Attorney, Division of Collections, P.O. Box 5222, Frankfort, Kentucky 40602, phone (502) 564-4921 ext. 4445, fax (502) 564-7348.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: LeeAnne Applegate, Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes operating procedures for the Department of Revenue and financial institutions operating in Kentucky to follow when conducting electronic data matches and levies for the purpose of identifying and seizing accounts owned by delinquent taxpayers or debtors.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the detailed procedures for implementing and maintaining the provisions of KRS 131.670 - 131.676.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.672(7) authorizes the Department of Revenue to promulgate an administrative regulation to establish the procedures to be followed by the Department of Revenue and Kentucky financial institutions in designing, developing, implementing and operating a data match and levy system to assist the Department of Revenue in collecting delinquent taxes and debts owed to the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Under prior law, KRS 131.500 et seq., the Department of Revenue could issue levies against the bank accounts of delinquent taxpayers after all other means had been exhausted. The department currently serves paper levies in administering this administrative levy authority. These levies are not as effective as they could be since taxpayers can move funds from one institution to another faster than the department can investigate and determine where an account is located. KRS 131.670 - 131.676 provides for a mechanism to augment the paper levy process by providing for the use, once every calendar quarter, of an electronic medium to effectuate a data match and levy against every financial institution in Kentucky, including banks, credit unions, brokerage firms, and insurance companies, for the collection of delinquent taxes, delinquent support for children, and debts owed the Commonwealth as certified by KRS 45.237(4) and 45.241(6). This administrative regulation establishes operating procedures for the effective implementation and administration of KRS 131.670 - 131.676.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect approximately 268 banks, 106 credit unions and 306 security brokerage firms.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above group will be required to provide a file containing a list of their account holders to the department on a quarterly basis or match an inquiry file containing a list of delinquent taxpayers and debtors supplied by the department with their account holders and return the match to the department on a quarterly basis.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: approximately \$750,000

(b) On a continuing basis: approximately \$1,000 per year per financial institution (\$680,000)

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds will be utilized.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will not require an increase in fees or funding to implement.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation requires the department to reimburse financial institutions for the cost of implementing the data match program up to \$500.

(9) TIERING: Is tiering applied? No, tiering is not applied. All provisions of the regulations are applied equally to all regulated entities.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet, Department of Revenue

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.670 - 131.676

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Money collected will be returned to the General Fund or, if appropriate, the referring agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? FY 2009 = \$5.6 million

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? FY 2010 = \$8 million

(c) How much will it cost to administer this program for the first year? No increase over current funding levels.

(d) How much will it cost to administer this program for subsequent years? No increase over current funding levels.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## FINANCE AND ADMINISTRATION CABINET Office of the Secretary (New Administrative Regulation)

**200 KAR 5:390. Registration to collect Kentucky sales and use tax.**

RELATES TO: 2008 Ky Acts. ch. 43 Sec. 1, KRS Chapter 139  
STATUTORY AUTHORITY: 2008 Ky Acts. ch. 43 Sec. 1

NECESSITY, FUNCTION, AND CONFORMITY: 2008 Ky. Acts. Ch. 43 Sec. 1 requires a person contracting with the Commonwealth to register with the Department of Revenue to collect and remit the sales and use tax imposed by KRS Chapter 139, and authorizes the secretary of the Finance and Administration Cabinet to promulgate administrative regulations to establish the procedure for ensuring compliance with this requirement. This administrative regulation establishes the procedure for ensuring compliance.

Section 1. (1) Any person awarded a contract with the Com-

monwealth to provide goods or services subject to sales and use tax pursuant to KRS 139.200 shall submit to the contracting agency:

(a) A copy of Form 51A101 Kentucky Sales and Use Tax Permit, which is incorporated by reference in 103 KAR 3:020, for the person and each of its affiliates if they are registered with the Department of Revenue to collect and remit the sales and use tax imposed by KRS Chapter 139; or

(b) Form 10A100, Kentucky Tax Registration application, which is incorporated by reference in 103 KAR 3:010, for the person and each of its affiliates, if not registered; and

(c) Form 10A105, State Vendor Eligibility Request Form for the person and each of its affiliates.

(2) The time frame for submission of the documentation required in subsection 1 of this section shall be set by the contracting agency in the bid documents.

(3) If a vendor is not registered but an application for registration is made, the Commonwealth may grant a conditional award of contract while the application is being processed.

(4) The vendor and each of its affiliates shall remain registered for the duration of any contract awarded.

Section 2. Failure to submit the required documentation or to remain registered and in compliance with the sales and use tax filing and remittance requirements of KRS 139.540 and 139.550 throughout the duration of the contract shall constitute a material breach of the contract and the contract may be terminated.

Section 3. Incorporation by Reference. (1) Form 10A105, "State Vendor Eligibility Request Form", July 2008, is incorporated by reference.

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

JONATHAN MILLER, Secretary

APPROVED BY AGENCY: July 15, 2008

FILED WITH LRC: July 17, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on the proposed amendment to this administrative regulation shall be held on September 23, 2008, at 10 a.m. in Room 386 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Angela C. Robinson, Staff Assistant, Finance and Administration Cabinet, Room 093 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-8649, fax (502) 564-3894.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela C. Robinson, (502) 564-8649

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides guidance for the registration process required by HB 609 enacted during the 2008 General Assembly.

(b) The necessity of this administrative regulation: To ensure compliance with HB609 and to inform possible vendors of the requirement to register for a sales and use tax number in order to obtain a contract to supply goods and services to the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new regulation provides additional guidance on the forms that must be submitted with the bid documents in order to be considered for state contract awards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Only the businesses having contracts or submitting bids to provide goods and services to the Commonwealth are affected. If they are not registered for sales and use tax, they will need to complete an application to obtain a sales and use tax number for the person applying as well as all affiliates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Complete registration application if they are not already registered, file sales and use tax returns and complete a list of their affiliates to verify they are registered as well.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Unknown. The cost will vary depending on the entity's size and current registration status. If they are already registered, there is nothing in addition to what they are currently doing, i.e. filing sales and use tax returns. If the person or their affiliates are not registered, the entity may incur some costs for a preparation of the subsequent sales and use tax returns.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Consistency and timeliness in compliance with the statutes.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: \$2,000 to create forms and code changes to existing registration system.

(b) On a continuing basis: Minimal

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Revenue agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This administrative regulation does not require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because the requirements of this regulation apply to every person who participates in the bidding process for state contracts for goods and services.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet and the Department of Revenue.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2008 Ky. Acts. Ch. 43, Sec. 1 and KRS Chapter 139.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Estimated to generate an additional \$500,000 to general fund.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Unknown, but estimated to be \$500,000 annually, based on similar regulations in other states.

(c) How much will it cost to administer this program for the first year? No increase over current funding levels.

(d) How much will it cost to administer this program for subsequent years? No increase over current funding levels.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET  
Kentucky State Board of Accountancy  
(Repealer)**

**201 KAR 1:171. Repeal of 201 KAR 1:170.**

RELATES TO: KRS 325.282, 325.330

STATUTORY AUTHORITY: KRS 325.240(2)

NECESSITY, FUNCTION AND CONFORMITY: During the 2008 meeting of the General Assembly, SB 49 amended then existing KRS 325.280 by eliminating the language that authorized the issuance of a CPA license through the process of substantial equivalency. Therefore the administrative regulation that governed that process, 201 KAR 1:170, is no longer required.

Section 1. 201 KAR 1:170, License Application to receive a privilege to practice under substantial equivalency standards, is hereby

REBECCA PHILLIPS, CPA, President

APPROVED BY AGENCY: August 14, 2008

FILED WITH LRC: August 15, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2008 at 10 a.m., EST at the administrative offices of the Board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by, five work days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502)

595-4281.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Richard Carroll

(1) Provide a brief summary of:

(a) What this administrative regulation does: It repeals 201 KAR 1:170.

(b) The necessity of this administrative regulation: To repeal a regulation that is no longer necessary.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Since the statutes no longer allow for a license to be issued under the substantially equivalent process this regulation is no longer necessary.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will remove a regulation that is no longer necessary.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individual CPA's located in other states who used to be required to obtain a license to practice in Kentucky will no longer be required to obtain a license. There will be no effect on local or state governments. Some of these CPA's may decide to obtain a license through the reciprocity process while others will not. Therefore it is difficult at this time to estimate the number of out of state CPA's affected by this change.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will no longer be required to obtain a license.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Nothing

(b) On a continuing basis: Nothing

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None at this time.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No

(9) TIERING: Is tiering applied? Tiering is not applied since all out of state CPAs will be treated the same.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET

#### Kentucky Board of Licensure for Private Investigators (New Administrative Regulation)

#### 201 KAR 41:065. Inactive status.

RELATES TO: KRS 329A.025(3)(e)

STATUTORY AUTHORITY: KRS 329A.045(12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 329A.025(3)(e) authorizes the board to renew licenses and consider requiring continuing education as a condition for renewal. KRS 329A.045(12) states that a valid license may be put on inactive status by the licensee at the time of renewal at a cost to be determined by the board. This administrative regulation sets forth the requirements for inactive licensure status and references the appropriate sections of the administrative register regarding fee payment and continuing education requirements.

Section 1. Inactive licensure status may be granted to a licensee upon written request to the board at the time of renewal in accordance with KRS 329A.045(12) and upon completion of the Renewal Application Form as referenced in 201 KAR 41:060. A licensee who is placed on inactive status shall not advertise, or perform any of the duties that KRS 329A.010(4), or hold himself out as a private investigator in violation of KRS 329A.015. An inactive licensee shall refrain from displaying the license during the period of inactive licensure. The identification card shall be returned to the board office within ten (10) days of acknowledgement of inactive status by the board. Violation of the inactive status could subject the licensee to the penalties associated with KRS 329A.080. In addition, the licensee could be subject to action pursuant to KRS 329A.025(3)(g).

(1) The licensee shall pay the fee for placing the license in inactive status set forth in 201 KAR 41:040, Section 7.

(2) The licensee shall be required to meet the requirements for continuing education as set forth in 201 KAR 41:070, Section 10.

(3) The inactive licensee shall be required to either affirm the inactive status or request a return to active licensure each renewal cycle.

Section 2. The licensee may return to active status upon written notification to the board, payment of the fee set forth in 201 KAR 41:040, Section 7, and proof of compliance with all continuing education requirements as set forth in 201 KAR 41:070, Section 10.

This is to certify that the Chair of the Kentucky Board of Licensure for Private Investigators executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the board as reflected in the board's

minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 329A.

RICK A. HESSIG, Chair

APPROVED BY AGENCY: May 1, 2008

FILED WITH LRC: July 30, 2008

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2008, at 3 p.m., local time, at the Kentucky Board of Licensure for Private Investigators, 911 Leewood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Gerald Hoppmann, Director, Kentucky Board of Licensure for Private Investigators, 911 Leewood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, fax (502) 564-4818.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerald Hoppmann, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for inactive licensure status and references the appropriate sections of the administrative register regarding fee payment and continuing education requirements.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to place applicants for licensure on notice of the fee structure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute to set fees for inactive status and to determine the continuing education requirements associated with licensure renewal.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a convenient reference point for licensees to find the information relative to inactive licensure status. Specifically, the licensees are given the regulatory references for the inactive fee and continuing education requirements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable as this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable as this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable as this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are 309 individual licensees and 88 licensed companies.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment: This administrative regulation complies with the statutory provisions which allow a licensee to place their license on inactive status at the time of renewal. It references the appropriate administrative regulation on the fee and the continuing education requirements necessary to obtain inactive status.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The inactive status fee is \$100. The inactive renewal fee is \$100.

(c) As a result of compliance, what benefits will accrue to entities identified in question (3): Licensees who wish to place their licenses on inactive status will not be required to maintain liability insurance and pay a lower licensure fee.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly establish or increase any existing fees. The fees associated with inactive licensure status are set forth in 201 KAR 41:040.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all applicants for inactive licensure status.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The fees derived by this administrative regulation are used to operate the Kentucky Board of Licensure for Private Investigators which is housed in the Division of Occupations and Professions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 329A.025(3)(e), and 329A.045(12).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The inactive status fee is \$100. The inactive renewal fee is \$100. The Board has only been in existence for approximately 3 years and therefore it is difficult to estimate the amount of income generated. Licenses are issued for a two year term. Currently, there are 309 individually licensed private investigators in Kentucky and 88 licensed companies. It is impossible to estimate how many licensees will want to take advantage of the inactive licensure status.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The answer to this question is the same as (a) above.

(c) How much will it cost to administer this program for the first year? The administrative costs to operate the board are derived from the fees charged. No additional costs are anticipated in association with the implementation of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The answer to this question is the same as (c) above.

#### CABINET FOR ECONOMIC DEVELOPMENT Kentucky Economic Development Finance Authority (New Administrative Regulation)

#### 307 KAR 1:050. Application process for Tax Increment Financing.

RELATES TO: KRS Chapter 154, Subchapter 30 and KRS 154.20-033.

STATUTORY AUTHORITY: KRS 154.30-030(2)(b) and KRS 154.20-033.

NECESSITY, FUNCTION AND CONFORMITY: KRS 154.30-030 requires the Kentucky Economic Development Finance Authority to establish additional standards and requirements for the application process for Tax Increment Financing. KRS 154.20-033 authorizes the Kentucky Economic Development Finance Authority to impose fees in conjunction with the application process. This administrative regulation clarifies the application process, identifies the information required for purposes of application, and clarifies the steps that shall be taken by the authority and the applicant between preliminary approval and final approval.

Section 1. Definitions. (1) "Agency" is defined by KRS 154.30-010(2).

(2) "Agreement" means a "tax incentive agreement" as defined by KRS 154.30-010(29).

(3) "Application" means the form "Application for Tax Increment Financing (TIF)".

(4) "Authority" is defined by KRS 154.30-010(5).

(5) "Capital Investment" is defined by KRS 154.30-010(6).

(6) "City" is defined by KRS 154.30-010.

(7) "County" is defined by KRS 154.30-010(10).

(8) "Development area" is defined by KRS 154.30-010(13).

(9) "Incentives" means the state tax revenues as defined in KRS 154.30-010(28) that may be pledged by the authority under the specific tax increment financing participation program for which an applicant has applied.

(10) "Project" is defined by KRS 154.30-010(25).

Section 2. Application. A city, county or agency applying for incentives pursuant to KRS 154.30 shall submit an application to the Department of Financial Incentives within the Cabinet for Economic Development at the Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601. Applications may be submitted by electronic mail, by mail or by hand delivery. If an application is submitted by electronic mail, the signature pages relevant to that application must be submitted by mail in the original hard copy. The authority shall not accept electronic signatures.

Section 3. Local Certification. The governing body of the city, county, or agency submitting the application shall include with its submission to the authority the determinations, findings, and data required by KRS 65.7049(3) and (4).

Section 4. Application Supplements. In addition to the information required by KRS 154.30-030, the applicant shall provide:

(1) All information required by the "Application for Tax Increment Financing Program (TIF)", which is incorporated herein by reference.

(2) An application fee in the amount of \$1,000.

(3) Copies of any grant or loan applications, agreements, contracts or other documentation related to financing of the project shall be provided upon request of the authority.

Section 5. Preliminary Approval. If, based upon the application itself and other information submitted to or requested by the authority, it appears that the minimum requirements for any of the Tax Increment Financing Programs involving state participation are likely to be met, the staff shall make a recommendation to the authority and submit the project for preliminary approval. If the authority staff cannot confirm the minimum requirements, a letter shall be sent to the applicant identifying the specific requirements

which have not been met.

Section 6. Use and Costs of Contract Consultant. (1) If the project receives preliminary approval, and state participation is requested under KRS 154.30-050 or 154.30-060, the authority shall contract with an outside consultant with the expertise required to analyze the project pursuant to KRS 154.30-030. If the application requests state participation under 154.30-040, the authority may contract with an outside consultant to analyze the project if the authority determines that additional information is necessary.

(2) If the application requests state participation under KRS 154.30-050 or 154.30-060, the authority shall consult with the Office of State Budget Director, the contract consultant, and the Department of Revenue and develop an appropriate analysis that will meet the requirements of KRS 154.30-030.

(3) Notwithstanding the statutory section under which state participation is requested, if the authority seeks analysis of a contract consultant:

(a) The contract consultant shall provide an estimate of the cost of the analysis;

(b) The applicant shall pay to the authority the total estimated cost of the analysis in advance and shall execute a consultant payment agreement; and

(c) The authority shall pay the contract consultant from the consultant funds paid by the applicant to the authority in accordance with the terms and conditions of the consultant payment agreement.

(6) Any balance of funds remaining after completion and delivery of the contract consultant's analysis to the authority shall be returned to the applicant.

Section 7. Memorandum of Agreement. (1) If the authority grants preliminary approval of the application, it shall enter into a Memorandum of Agreement with the applicant which shall include, but shall not be limited to, the following:

(2) Identification of the footprint of the project. The total maximum incentive amount preliminarily approved by the authority.

(3) Conditions for final approval, including:

(a) Verification of representations made in the application and other documents submitted in association with the application; and

(b) Payment for all professional services that may result from the application including legal fees and expenses of counsel to the authority pursuant to KRS 154.20-033.

(4) A date by which all statutory and regulatory requirements for final approval shall have been met and a schedule for periodic reporting at the discretion of the authority.

(5) Terms and standards for amendment of the Memorandum of Agreement.

Section 8. Information Sharing. (1) The authority may seek comments and recommendations from the Office of the State Budget Director and the Department of Revenue.

(2) Information provided to the authority in conjunction with the application may be shared with the Office of State Budget Director, Department of Revenue and any affected local jurisdictions as well as appropriate experts or contract consultants, and those agencies, experts or contract consultants shall maintain the confidentiality of the information provided to the extent that the information is exempt from disclosure under the Kentucky Open Records Act, KRS 61.878.

Section 9. Final Approval. Upon final approval of a project by the authority, the authority and the agency shall enter into an agreement pursuant to KRS 154.30-070.

Section 10. Payment of Administrative Fees. (1) Upon final approval and execution of the tax incentive agreement required by KRS 154.30-070, the applicant shall remit to the authority an administrative fee equal to 0.25% of the incentives authorized in the tax incentive agreement, not to exceed \$50,000. This administrative fee is exclusive of any contract consultant fees or legal fees which may be due.

(2) The applicant shall not be eligible for incentives until the administrative fee, any consultant payments and all legal fees and

expenses are paid in full.

Section 11. Incorporation by Reference. (1) Application for Tax Increment Financing (TIF)", July 2008, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Economic Development, Department of Financial Incentives, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky Monday through Friday, 8 a.m. to 4:30 p.m.

JEAN HALE, Chairman

JOHN E. HINDMAN, Secretary

APPROVED BY AGENCY: July 21, 2008

FILED WITH LRC: July 21, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing of this administrative regulation shall be held on September 25, 2008, at 10 a.m. at the Cabinet for Economic Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 18, 2008, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amended administrative regulation to the contact person.

CONTACT PERSON: Catherine C. Staib, Assistant General Counsel, Cabinet for Economic Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601, phone (502) 564-7670, fax (502) 564-1535.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Catherine C. Staib,

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides clarification of the application process and the applicable steps for preliminary and final approval of Tax Increment Financing as required by KRS 154.30-030.

(b) The necessity of this administrative regulation: This regulation will provide guidance for those applying for approval of Tax Increment Financing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 154.30-030 directs the Kentucky Economic Development Finance Authority (the Authority) to promulgate a regulation for this purpose.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation is required by statute and will streamline the application process.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Cities, counties and other eligible agencies considering Tax Increment Financing as a source of funding development in the Commonwealth will have clear instructions for applying for applicable state incentives.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new or by the change, if it is an amendment, in-

cluding:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation sets forth the application and fee requirements and sets forth supplemental information that will be required as part of the application. Therefore, the applicant will have to follow the steps of the application process, provide the supplemental documentation required, and pay the fee in order to qualify for submission to the Authority for consideration of approval.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is an application fee of \$1,000 and an administrative fee for projects that receive final approval that will vary based on the size of the project. The fee is 0.25% of the incentives awarded not to exceed \$50,000. Also, expert or contract consultant analysis of the proposed project may be necessary and costs of any contract consultant are to be paid by the applicant pursuant to KRS 154.30.030 as well as legal fees and expenses.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If the applicant project is approved, the incentive amount approved will vary depending on investment in the Commonwealth and tax revenue generated in the development area, but the inducements awarded will likely be significant relative to the size of the project.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The Cabinet has developed forms and processes and will be training existing personnel to administer the new program generally. At this time the implementation alone requires significant personnel time, but no cash expense.

(b) On a continuing basis: There will be administrative cost related to processing of the application for inducements and monitoring of the projects after they are approved to confirm continuing eligibility under the program, but the cost is unknown at this time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The application and administrative fee will provide some financial support, but general administration will have to be covered by existing operating funds from the general fund budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Yes. See explanation in (4)(b) above.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes. Please see (4)(b).

(9) TIERING: Is tiering applied? Tiering is used to the extent that the amount of the administrative fee is related to the amount of incentives awarded to the applicant. The fee is a percentage of total incentive awarded, so that smaller projects will pay less than larger ones.

#### FISCAL NOTE ON STATE OF LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire department, or school districts) will be impacted by this administrative regulation? The local government will be forfeiting some of its own tax base as well as state tax base, but will only be waiving new revenues it would not have had generated but for the development.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS Chapter 154.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Unknown

(b) How much revenue will this administrative regulation generate for the state of local government (including cities, counties, fire departments, or school districts) for subsequent years? Unknown

(c) How much will it cost to administer this program for the first year? Cost will depend on the number of applications and complexity of projects submitted.

(d) How much will it cost to administer this program for subsequent years? Cost will depend on the number of applications and complexity of projects submitted.

#### PUBLIC PROTECTION CABINET

##### Department of Insurance

##### Consumer Protection and Education Division (New Administrative Regulation)

#### 806 KAR 2:092. Disclosure of local government taxes.

RELATES TO: KRS 91A.080, 91A.0810, 304.3

STATUTORY AUTHORITY: KRS 91A.0810(2)

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 91A.0810(2) requires an insurance company to notify each current policyholder of their rights regarding payment of local government taxes and further requires the Kentucky Office of Insurance to promulgate an administrative regulation setting forth the text of that notice. This administrative regulation prescribes the text to be used by insurance companies when notifying their current policyholders of the payment for local government taxes and the process for appealing a payment. This administrative regulation also sets minimum standards for the future disclosure of local government taxes to policyholders.

Section 1. Definitions. (1) "Collection fee" means the fee established in KRS 91A.080(4).

(2) "Insurance company" means an entity holding a certificate of authority in accordance with KRS 304.3.

(3) "Local government tax" or "tax" means the license fee or tax imposed by a local government in accordance with KRS 91A.080 and does not include the collection fee.

Section 2. Notice to Current Policyholders. (1) Before December 31, 2008, an insurance company shall provide each policyholder who has a policy in effect on July 15, 2008, with a one (1) time notice that states, "Your insurance premium may be subject to a license fee or tax imposed by your local government. The amount of the fee or tax is determined by the local government where the insured risk is located. The tax and any collection fee, if included in the charges to you, will be shown on all future renewal certificates or premium billings for your policy. If you believe that you have been erroneously charged or have been overcharged the tax, you may contact us for information on how to request a refund or credit for the tax paid."

(2) If a policyholder is insured under more than one (1) policy with an insurance company, the insurance company may send one (1) notice to the policyholder to satisfy the requirements of subsection one (1) of this section.

Section 3. Disclosure of Local Government Tax. (1) On and after December 31, 2008, an insurance company shall disclose to the policyholder the amount of local government tax being charged to the policyholder and the taxing jurisdiction to which the tax is due.

(2) Disclosure of a local government tax shall not be required if the insurance company does not charge the tax to the policyholder.

(3) The disclosure shall:

(a) Itemize:

1. The amount of tax and any collection fee charged to the policyholder for each taxing jurisdiction; and

2. The name or abbreviation clearly identifying each corresponding taxing jurisdiction to which the tax is due; and

(b) Be provided to the policyholder:



1. On the renewal certificate upon renewal of the policy; or
2. On the billing for each period for which premium or additional premium is charged to a policyholder by the insurance company.

(4)(a) If local government tax is owed to multiple taxing jurisdictions, the disclosure required in subsection (3) of this section shall list separately each taxing jurisdiction to which tax is owed.

(b) If a credit of a city tax is applied to a county tax pursuant to KRS 91A.080(12), and the result is that no tax is owed to the county, the disclosure may include the county in the itemization of taxing jurisdictions required in subsection (3) of this section.

(5) If a collection fee is included in the amount charged to the policyholder, the disclosure shall state that the amount includes the tax and a collection fee.

(6)(a) An insurance company may provide the disclosure on a notice separate from either the renewal certificate or billing if providing the disclosure on the renewal certificate or billing would cause the disclosure to be illegible due to type size or other space considerations.

(b) If the disclosure is provided on a separate notice, the insurance company shall provide the disclosure to the policyholder at the same time and in the same manner as the insurance company provides the renewal certificate or billing.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: August 8, 2008

FILED WITH LRC: August 14, 2008 at 4 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on September 29, 2008 at 9 a.m., (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 22, 2008 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** DJ Wasson, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the text to be used by insurance companies when notifying their current policyholders of the payment for local government taxes and the process for appealing a payment. This administrative regulation also sets minimum standards for the future disclosure of local government taxes to policyholders.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement HB 524, enacted during the 2008 Regular Session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 91A.0810(2) requires the Office of Insurance to promulgate the text of a one-time disclosure to policyholders regarding payment of a local government tax and the policyholder's rights under 08 RS HB 524. This administrative regulation establishes the text for that disclosure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the text that insurers must provide to each current policyholder in order to comply with KRS 91A.0810(2). Additionally, it sets forth the minimum standards for compliance with future disclosure of local government taxes as

required by KRS 91A.0810(1).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 1,409 insurance companies that hold a certificate of authority in Kentucky and are subject to local government taxes.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be required to provide a notice to current policyholders, as set forth in this administrative regulation, explaining that premiums include charges for local government taxes and providing brief instructions on the process if a policyholder disagrees with the tax charged. Additionally, regulated entities will be required to comply with the minimum standards for future disclosure of local government taxes to policyholders.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department requested information regarding the cost impact of implementing this regulation from various interested parties. While all who responded agreed that on-going costs will be minimal, responses regarding initial costs were wide-ranging from minimal to significant, depending on the ease at which an insurer's automated billing or renewal system can be amended.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, regulated entities will provide their policyholders with important information about local government taxes which is intended to aid in the proper collection and remittance of taxes to local governments. Additionally, regulated entities will be able to comply with the provisions of 08 RS HB 524 in an efficient manner.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: The cost will be minimal.

(b) On a continuing basis: There should be no additional cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There will be no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly establish any new fees.

(9) **TIERING:** Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies holding a certificate of authority in Kentucky and subject to local government taxes.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 91A.0810.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**PUBLIC PROTECTION CABINET  
Department of Insurance  
Life Insurance Division  
(New Administrative Regulation)**

**806 KAR 6:130. Minimum standards for determining reserve liabilities and nonforfeiture values for preneed insurance.**

RELATES TO: KRS 304.1-040, 304.6-130, 304.6-140, 304.6-170, 304.6-171, 304.6-180, 304.12-085, 304.15-342

STATUTORY AUTHORITY: KRS 304.2-110, 304.6-140, 304.15-410

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010 through 304.99-152. KRS 304.6-140 provides that the executive director may approve by administrative regulation any mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum standard for valuation of policies. KRS 304.15-410 provides for reserves held under any plan of life insurance which provides for future premium determination to be appropriate in relation to the benefits and computed by a method which is consistent with the principles of the standard valuation law, as determined by regulations promulgated by the executive director. This administrative regulation establishes minimum mortality standards for preneed insurance product reserves and nonforfeiture values, and requires the use of the 1980 Commissioners Standard Ordinary (CSO) Life Valuation Mortality table in determining the minimum standard of valuation of reserves and minimum standard nonforfeiture values for preneed insurance products.

Section 1. Definitions. (1) "1980 CSO Table (F), with or without Ten (10) Year Select Mortality Factors" means that mortality table consisting of the rates of mortality for female lives from the 1980 CSO Table, with or without Ten (10) Year Select Mortality Factors.

(2) "1980 CSO Table (M), with or without Ten (10) Year Select Mortality Factors" means that mortality table consisting of the rates of mortality for male lives from the 1980 CSO Table, with or without

Ten (10) Year Select Mortality Factors.

(3) "2001 CSO Mortality Table" means a mortality table that:

(a) Consists of separate rates of mortality for male and female lives;

(b) Was developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force and adopted by the National Association of Insurance Commissioners in December 2002;

(c) Is published in the Proceedings of the NAIC (2nd Quarter 2002) and supplemented by the 2001 CSO Preferred Class Structure Mortality Table; and

(d) Includes, unless the context indicates otherwise, both:

1. The ultimate form and the select and ultimate form of the table;

2. The smoker and nonsmoker mortality tables and the composite mortality tables; and

3. The age-nearest-birthday and the age-last-birthday bases of the mortality tables.

(4) "Commissioner" means the Commissioner of the Department of Insurance.

(5) "Insurer" is defined in KRS 304.1-040.

(6) "Merged Gender Ultimate 1980 CSO Table" means any mortality table which is a blend of the 1980 CSO Table (M), without Ten (10) Year Select Mortality Factors, and the 1980 CSO Table (F), without Ten (10) Year Select Mortality Factors, which have been adopted by the National Association of Insurance Commissioners.

(7) "Prened insurance" means a life insurance policy issued by an insurance company which:

(a) Whether by assignment or otherwise, has for a purpose the funding of a preneed funeral contract or an insurance-funded funeral or burial agreement; and

(b) Pays funds for the funeral or burial of the insured.

(8) "Ultimate 1980 CSO Table", means a mortality table, consisting of separate rates of mortality for male and female lives, without Ten (10) Year Select Mortality Factors, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, referenced in KRS 304.6-140 and 304.15-342.

Section 2. Minimum Valuation and Nonforfeiture Mortality Standards. (1) For preneed insurance, the minimum mortality standard for determining reserve liabilities and nonforfeiture values for male and female insureds shall be the male Ultimate 1980 CSO Table and the female Ultimate 1980 CSO Table respectively.

(2) A Merged Gender Ultimate 1980 CSO Table may, at the option of the insurer, be substituted for the male Ultimate 1980 CSO Table or the female Ultimate 1980 CSO Table minimum mortality standard for determining nonforfeiture values.

(3) It shall not be a violation of KRS 304.12-085 for an insurer to issue the same kind of policy of life insurance on both a sex distinct and sex neutral basis if:

(a) The insurer establishes, prior to issue of any policy which is to be offered, the conditions under which each type will be marketed; and

(b) The conditions, together with sufficient information to establish that an unfairly discriminatory condition will not be created, are filed with the commissioner for approval in accordance with KRS 304.14-120.

Section 3. Transition Rules. (1) For preneed insurance policies issued on or after the effective date of this administrative regulation and before January 1, 2012, the 2001 CSO Mortality Table may be used as the minimum standard for reserves and the minimum standard for nonforfeiture benefits for both male and female insureds.

(2) If an insurer elects to use the 2001 CSO Mortality Table as a minimum standard for any policy issued on or after the effective date of this administrative regulation and before January 1, 2012, the insurer shall provide, as part of the actuarial opinion memorandum required by KRS 304.6-171 submitted in support of the insurer's asset adequacy testing, an annual written notification to the domiciliary state insurance commissioner. The notification shall

include:

(a) A complete list of all preneed policy forms that use the 2001 CSO Mortality Table as a minimum standard;

(b) A certification signed by the appointed actuary stating that the reserve methodology employed by the insurer in determining reserves for the preneed policies after the effective date of this administrative regulation and using the 2001 CSO Mortality Table as a minimum standard, develops adequate reserves. For purposes of this certification, the preneed policies using the 2001 CSO Mortality Table as a minimum standard shall not be aggregated with any other policies; and

(c) Supporting information regarding the adequacy of reserves for preneed insurance policies issued after the effective date of this administrative regulation and using the 2001 CSO Mortality Table as a minimum standard for reserves.

(3) Preneed insurance policies issued on and after January 1, 2012, shall use the Ultimate 1980 CSO Tables in the calculation of minimum nonforfeiture values and minimum reserves.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Ultimate 1980 CSO Table", published in the proceedings of the National Association of Insurance Commissioners, 1984, Vol. 1, pages 402-413;

(b) "Merged Gender Ultimate 1980 CSO Table", published in the proceedings of the National Association of Insurance Commissioners, 1984, Vol. 1, pages 396-400; and

(c) "2001 CSO Mortality Table", published in the proceedings of the National Association of Insurance Commissioners, Second Quarter 2002.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: August 11, 2008

FILED WITH LRC: August 14, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2008 at 9 a.m., at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 22, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for preneed insurance product minimum mortality standards for reserves and nonforfeiture values, and to require the use of the 1980 Commissioners Standard Ordinary (CSO) Life Valuation Mortality table for use in determining the minimum standard of valuation of reserves and the minimum standard nonforfeiture values for preneed insurance products.

(b) The necessity of this administrative regulation: This admin-

istrative regulation is necessary to maintain proper reserves for preneed life insurance policies and keep equitable the current tax treatment of those necessary reserves.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010 through 304.99-152. KRS 304.6-140 provides that the executive director may approve by administrative regulation any mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum standard for valuation of policies. KRS 304.15-410 provides for reserves held under any plan of life insurance which provides for future premium determination to be appropriate in relation to the benefits and computed by a method which is consistent with the principles of the standard valuation law, as determined by regulations promulgated by the executive director. This administrative regulation establishes the mortality tables required to be used by insurers for reserves and nonforfeiture values for preneed life insurance policies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the mortality tables required to be used by insurers for reserves and nonforfeiture values for preneed life insurance policies.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 520 insurers that are licensed to offer life insurance in the Commonwealth of Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be required to utilize the prescribed mortality tables when determining reserve and nonforfeiture values for preneed life insurance policies.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the provisions of the regulation allow insurers that have already started utilizing the 2001 CSO mortality table for preneed insurance to move back to the 1980 CSO Mortality table over a 4 year period, an insurer should only incur minimal costs to comply with this regulation. Insurers are encouraging all states to adopt this regulation prior to the end of 2008.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, regulated entities will be in compliance with the standard valuation laws in Kentucky for preneed life insurance policies.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: The cost will be minimal.

(b) On a continuing basis: There should be no additional cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There will be no increase in fees or funding necessary to implement this admin-

istrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly establish any new fees.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.) Tiering is not applied because this regulation applies equally to all insurance companies holding a certificate of authority in Kentucky and offering preneed life insurance policies.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 304.6-140, 304.15-410

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### **PUBLIC PROTECTION CABINET Department of Insurance Life Insurance Division (New Administrative Regulation)**

#### **806 KAR 15:080. Paid-up life insurance policies.**

RELATES TO: KRS 304.15-175

STATUTORY AUTHORITY: KRS 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance headed by a Commissioner. KRS 304.2-110(1) authorizes the Executive Director of the Office of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010 through 304.99-152. This administrative regulation establishes standards for the submission of a notice of a paid-up life insurance policy by an insurer to the Department of Insurance. This administrative regulation also establishes the process for requesting information regarding a paid-up life insurance policy.

Section 1. Definitions. (1) "Commissioner" means the commissioner of the Department of Insurance.

(2) "Department" means the Department of Insurance.

(3) "Paid-up policy" means a whole life insurance policy under which all premiums have already been paid, with no further premi-

um payment due, including a life insurance policy where the policy is in the reduced paid-up nonforfeiture option.

(4) "Universal life insurance" means a life insurance policy in which separately identified interest credits, other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts, and mortality and expense charges are made to the policy;

(5) "Variable life insurance" means a life insurance policy under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

Section 2. Exemptions. This administrative regulation shall not apply to:

- (1) Annuities;
- (2) Credit life insurance;
- (3) Group life insurance;
- (4) Term life insurance;
- (5) Universal life insurance; and
- (6) Variable life insurance.

Section 3. Timeframe for Submission of Notice. Beginning August 30, 2008, and monthly thereafter, insurers shall provide notice to the Department, in accordance with Sections 4 and 5 of this administrative regulation, of all paid-up policies issued in Kentucky within thirty (30) days of completion of all policy payments.

Section 4. Methods of Filing. (1) Notice of a paid-up policy shall be submitted by an insurer to the Department electronically through:

(a) eServices via the department's Web site, <http://insurance.ky.gov>; or

(b) A file transfer protocol, incorporating the information included in Section 5 of this administrative regulation.

(2) To utilize the option of submitting notice through a file transfer protocol, an insurer shall send a written letter to the department requesting to initiate this service.

Section 5. Information required on the Notice. (1) The following information regarding a paid-up policy shall be submitted to the department by an insurer:

- (a) The insurer's identification number assigned by the National Association of Insurance Commissioners;
- (b) The name of the policyholder;
- (c) The last known address of the policyholder;
- (d) The policy number;
- (e) The date the policy was paid up;
- (f) The name of the insured; and
- (g) The insured's date of birth.

(2) The following information regarding a paid-up policy may be submitted to the department by an insurer:

- (a) The policyholder's Social Security number;
- (b) The policyholder's date of birth;
- (c) The name of all of the beneficiaries named; and
- (d) The relationship of the beneficiary to the policyholder.

Section 6. Request of Policy Information Requirements. (1) A request for information on a paid-up policy shall be made by submitting a Request for Paid-Up Policy Information, PUL-1, in writing to the Department. The request shall be made by one of the following individuals:

- (a) The policyholder;
- (b) The beneficiary; or
- (c) An individual with legal authority to obtain insurance-related information on the insured.

(2) The written request shall include the following documentation:

- (a) If the insured is deceased,
  1. A certified copy of the death certificate for the insured; and
  - 2.a. Documentation identifying the requestor as a policyholder or beneficiary under the paid-up policy; or
  - b. A court order permitting the requestor to obtain insurance-related information on the insured.
- (b) If the insured is not deceased,
  1. Documentation identifying the requestor as the policyholder;

or

2. A copy of the power of attorney allowing the requestor to obtain insurance-related information regarding the insured.

Section 7. Incorporated by Reference. (1) "Request for Paid-Up Policy Information, PUL-1", 7/2008, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the Department's internet Web site at: <http://insurance.ky.gov>

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: August 11, 2008

FILED WITH LRC: August 14, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2008 at 9 a.m., (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 22, 2008 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for the submission of a notice of a paid-up life insurance policy by an insurer to the Department of Insurance. This administrative regulation also establishes the process for requesting information regarding a paid-up life insurance policy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement HB 179, enacted during the 2008 Regular Session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes the procedure for submitting a notice of a paid-up policy to the Department, as required by 2008 RS HB 179 and establishes the procedure for requesting information about a paid-up policy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies the term, "paid-up policy", establishes an electronic method to submit notice of a paid-up policy, and includes safeguards for ensuring that only authorized individuals are able to obtain information about a paid-up policy, as this information is protected under other administrative regulations and federal law.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 520 insurers that are licensed to offer life insurance in Kentucky, and individuals wanting information about paid-up policies.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be required to submit notice of a paid-up policy to the Department of Insurance through an electronic means either through the Department's secure Web site or through a file transfer protocol. Individuals requesting information about a paid-up policy must provide documentation of a specified relationship with the insured in order to obtain otherwise private information.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): We requested that the industry provide us with information on the cost impact of this regulation. The Department of Insurance has not received a response to its request.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, individuals will be able to obtain information about misplaced or transferred life insurance policies and be able to utilize this asset. Regulated entities will be able to comply with the provisions of 2008 RS HB 179 in an efficient manner.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: The cost will be minimal.

(b) On a continuing basis: There should be no additional cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There will be no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies offering life insurance in Kentucky.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regula-

tion should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

# **CABINET FOR HEALTH AND FAMILY SERVICES**

## **Department for Medicaid Services**

### **Division of Community Alternatives**

#### **(New Administrative Regulation)**

## **907 KAR 1:835. Michelle P. waiver services and reimbursement.**

RELATES TO: KRS 205.520(3), 205.5605, 205.5606, 205.5607, 205.635, 42 C.F.R. 440.180

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606, 42 C.F.R. 440.180, 42 U.S.C. 1396a, b, d, n

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the coverage and reimbursement provisions for Michelle P. waiver services.

Section 1. Definitions. (1) "ADHC" means adult day health care.

(2) "ADHC center" means an adult day health care center licensed in accordance with 902 KAR 20:066.

(3) "ADHC services" means health-related services provided on a regularly-scheduled basis that ensure optimal functioning of a Michelle P. waiver recipient who does not require twenty-four (24) hour care in an institutional setting.

(4) "Advanced registered nurse practitioner" or "ARNP" means a person who acts within his or her scope of practice and is licensed in accordance with KRS 314.042.

(5) "Assessment team" means a team which:

(a) Conducts assessment or reassessment services; and

(b) Consists of:

1. Two (2) registered nurses; or

2. One (1) registered nurse and one (1) of the following:

a. A social worker;

b. A certified psychologist with autonomous functioning;

c. A licensed psychological practitioner;

d. A licensed marriage and family therapist; or

e. A licensed professional clinical counselor.

(6) "Behavioral support specialist" means an individual who has a master's degree from an accredited institution with formal graduate course work in a behavioral science and at least one (1) year of experience in behavioral programming.

(7) "Blended services" means a nonduplicative combination of Michelle P. waiver services identified in Section 7 of this administrative regulation and consumer-directed option services identified in Section 8 of this administrative regulation provided pursuant to a recipient's approved plan of care.

(8) "Budget allowance" is defined by KRS 205.5605(1).

(9) "Certified psychologist with autonomous functioning" or "licensed psychological practitioner" means a person licensed pursuant to KRS Chapter 319.

(10) "Communicable disease" means a disease that is trans-

mitted:

(a) Through direct contact with an infected individual;

(b) Indirectly through an organism that carries disease-causing microorganisms from one (1) host to another; or

(c) Indirectly by a bacteriophage, a plasmid, or another agent that transfers genetic material from one (1) location to another.

(11) "Consumer" is defined by KRS 205.5605(2).

(12) "Consumer-directed option" or "CDO" means an option established by KRS 205.5606 within the home and community-based service waivers which allows recipients to:

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

(c) Direct the delivery of services to meet their needs.

(13) "Covered services and supports" is defined by KRS 205.5605(3).

(14) "DCBS" means the Department for Community Based Services.

(15) "Department" means the Department for Medicaid Services or its designee.

(16) "Developmental disability means a severe, chronic disability that:

(a) Is attributable to:

1. Cerebral palsy or epilepsy; or

2. Any other condition, excluding mental illness, closely related to mental retardation resulting in impairment of general intellectual functioning or adaptive behavior similar to that of an individual with mental retardation and which requires treatment or services similar to those required by persons with mental retardation;

(b) Is manifested prior to the individual's 22nd birthday;

(c) Is likely to continue indefinitely; and

(d) Results in substantial functional limitations in three (3) or more of the following areas of major life activity:

1. Self-care;

2. Understanding and use of language;

3. Learning;

4. Mobility;

5. Self-direction; or

6. Capacity for independent living.

(17) "Direct-contact staff" means an individual hired by a Michelle P. waiver provider to provide services to the recipient and who:

(a)1. Is eighteen (18) years of age or older; and

2. Has a high school diploma or GED; or

(b)1. Is twenty-one (21) years of age or older; and

2. Is able to adequately communicate with recipients and staff;

(c) Has a valid Social Security number or valid work permit if not a U.S. citizen;

(d) Can understand and carry out simple instructions;

(e) Has the ability to keep simple records; and

(f) Is managed by the provider's supervisory staff.

(18) "Electronic signature" is defined by KRS 369.102(8).

(19) "ICF-MR-DD" means an intermediate care facility for an individual with mental retardation or a developmental disability.

(20) "Home and community support services" means nonresidential and nonmedical home and community based services and supports that:

(a) Meet the consumer's needs; and

(b) Constitute a cost-effective use of funds.

(21) "Home health agency" means an agency that is:

(a) Licensed in accordance with 902 KAR 20:081, Operation and services; home health agencies; and

(b) Medicare and Medicaid certified.

(22) "Level of care determination" means a determination that an individual meets the ICF-MR-DD level of care criteria established in Section 5 of this administrative regulation.

(23) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(24) "Licensed practical nurse" or "LPN" means a person who:

(a) Meets the definition of KRS 314.011(9); and

(b) Works under the supervision of a registered nurse.

(25) "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).

(26) "Mental retardation" means an individual has:

(a) Significantly sub-average intellectual functioning;

(b) An intelligence quotient of seventy (70) or below;  
(c) Concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:

1. Communication;
2. Self-care;
3. Home living;
4. Social or interpersonal skills;
5. Use of community resources;
6. Self-direction;
7. Functional academic skills;
8. Work;
9. Leisure; or
10. Health and safety; and

(d) Had an onset prior to eighteen (18) years of age.

(27) "Michelle P. recipient" means an individual who:

(a) Is a recipient as defined by KRS 205.8451(9);

(b) Meets the ICF-MR-DD level of care criteria established in Section 5 of this administrative regulation; and

(c) Meets the eligibility criteria for Michelle P. waiver services established in Section 4 of this administrative regulation.

(28) "Normal baby sitting" means general care provided to a child which includes custody, control, and supervision.

(29) "Occupational therapist" is defined by KRS 319A.010(3).

(30) "Occupational therapist assistant" is defined by KRS 319A.010(4).

(31) "Patient liability" means the financial amount an individual is required to contribute toward cost of care in order to maintain Medicaid eligibility.

(32) "Physical therapist" is defined by KRS 327.010(2).

(33) "Physical therapist assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(34) "Physician assistant" or "PA" is defined by KRS 311.840(3).

(35) "Plan of care" or "POC" means a written individualized plan developed by:

(a) A Michelle P. recipient or a Michelle P. recipient's legal representative;

(b) The case manager or support broker; and

(c) Any other person designated by the Michelle P. recipient if the Michelle P. recipient designates another person.

(36) "Plan of treatment" means a care plan used by an ADHC center.

(37) "Psychologist" is defined by KRS 319.010(8).

(38) "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(39) "Qualified Mental Retardation Professional" or "QMRP" is defined by KRS 202B.010(12).

(40) "Registered nurse" or "RN" means a person who:

(a) Meets the definition established in KRS 314.011(5); and

(b) Has one (1) year or more experience as a professional nurse.

(41) "Representative" is defined by KRS 205.5605(6).

(42) "SCL waiting list individual" means an individual on the Supports for Community Living (SCL) waiting list pursuant to 907 KAR 1:145, Section 7.

(43) "Sex crime" is defined by KRS 17.165(1).

(44) "Social worker" means a person with a bachelor's degree in social work, sociology, or a related field.

(45) "Speech-language pathologist" is defined by KRS 334A.020(3).

(46) "Supervisory staff" means an individual employed by the Michelle P. waiver provider who shall manage direct-care staff and who:

(a)1. Is eighteen (18) years of age or older; and

2. Has a high school diploma; or

(b)1. Is twenty-one (21) years of age or older; and

2. Has a minimum of one (1) year experience in providing services to individuals with mental retardation or developmental disability;

(c) Is able to adequately communicate with the recipients, staff, and family members;

(d) Has a valid Social Security number or valid work permit if not a U.S. citizen; and

(e) Has the ability to perform required record keeping.

(47) "Support broker" means an individual chosen by a consumer from an agency designated by the department to:

(a) Provide training, technical assistance, and support to a consumer; and

(b) Assist a consumer in any other aspects of CDO.

(48) "Support spending plan" means a plan for a consumer that identifies the:

(a) CDO services requested;

(b) Employee name;

(c) Hourly wage;

(d) Hours per month;

(e) Monthly pay;

(f) Taxes;

(g) Budget allowance; and

(h) Six (6)-month budget.

(49) "Violent crime" is defined by KRS 17:165(3).

Section 2. Non-CDO Provider Participation. (1) In order to provide Michelle P. waiver services, excluding consumer-directed option services, a provider shall be:

(a) Licensed in accordance with:

1. 902 KAR 20:066 if an adult day health care provider;

2. 902 KAR 20:078 if a group home;

3. 902 KAR 20:081 if a home health service provider;

4. 902 KAR 20:091 if a community mental health center; or

(b) Be certified by the department in accordance with 907 KAR 1:145, Section 3, if a provider type not listed in paragraph (a) of this subsection.

(2) A Michelle P. waiver service provider shall:

(a) Provide services to Michelle P. waiver recipients:

1. Directly; or

2. Indirectly through a subcontractor;

(b) Comply with the following administrative regulations and program requirements:

1. 907 KAR 1:671;

2. 907 KAR 1:672; and

3. 907 KAR 1:673;

(c) Not enroll a Michelle P. recipient for whom the provider is unequipped or unable to provide Michelle P. waiver services; and

(d) Be permitted to accept or not accept a Michelle P. recipient.

Section 3. Maintenance of Records. (1) A Michelle P. waiver provider shall maintain:

(a) A clinical record for each Michelle P. recipient that shall contain the following:

1. Pertinent medical, nursing, and social history;

2. A comprehensive assessment entered on form MAP-351 and signed by the:

a. Assessment team; and

b. Department;

3. A completed MAP 109;

4. A copy of the MAP-350 signed by the recipient or his or her legal representative at the time of application or reapplication and each recertification thereafter;

5. The name of the case manager;

6. Documentation of all level of care determinations;

7. All documentation related to prior authorizations, including requests, approvals, and denials;

8. Documentation of each contact with, or on behalf of, a Michelle P. recipient;

9. Documentation that the Michelle P. recipient receiving ADHC services or legal representative was provided a copy of the ADHC center's posted hours of operation;

10. Documentation that the recipient or legal representative was informed of the procedure for reporting complaints; and

11. Documentation of each service provided. The documentation shall include:

a. The date the service was provided;

b. The duration of the service;

c. The arrival and departure time of the provider, excluding travel time, if the service was provided at the Michelle P. waiver

recipient's home;

d. Itemization of each service delivered;

e. The Michelle P. recipient's arrival and departure time, excluding travel time, if the service was provided outside the recipient's home;

f. Progress notes which shall include documentation of changes, responses, and treatments utilized to meet the Michelle P. recipient's needs; and

g. The signature of the service provider; and

(b) Fiscal reports, service records, and incident reports regarding services provided. The reports and records shall be retained:

1. At least six (6) years from the date that a covered service is provided; or

2. For a minor, three (3) years after the recipient reaches the age of majority under state law, whichever is longest.

(2) Upon request, a Michelle P. provider shall make information regarding service and financial records available to the:

(a) Department;

(b) Kentucky Cabinet for Health and Family Services, Office of Inspector General or its designee;

(c) United States Department for Health and Human Services or its designee;

(d) United States Government Accountability Office or its designee;

(e) Kentucky Office of the Auditor of Public Accounts or its designee; or

(f) Kentucky Office of the Attorney General or its designee.

Section 4. Michelle P. Recipient Eligibility Determinations and Redeterminations. (1) A Michelle P. waiver service shall be provided to a Medicaid-eligible Michelle P. recipient who:

(a) Is determined by the department to meet ICF-MR-DD level of care requirements in accordance with Section 5 of this administrative regulation; and

(b) Would, without waiver services, be admitted to an ICF-MR-DD.

(2) The department shall perform an ICF-MR-DD level of care determination for each Michelle P. recipient at least once every twelve (12) months or more often if necessary.

(3) A Michelle P. waiver service shall not be provided to an individual who:

(a) Does not require a service other than:

1. An environmental and minor home adaptation;

2. Case management; or

3. An environmental and minor home adaptation and case management;

(b) Is an inpatient of:

1. A hospital;

2. A nursing facility; or

3. An ICF-MR-DD;

(c) Is a resident of a licensed personal care home; or

(d) Is receiving services from another Medicaid home and community based services waiver program.

(4) A Michelle P. waiver provider shall inform a Michelle P. recipient or his legal representative of the choice to receive:

(a) Michelle P. waiver services; or

(b) Institutional services.

(5) An eligible Michelle P. recipient or the recipient's legal representative shall select a participating Michelle P. waiver provider from which the recipient wishes to receive Michelle P. waiver services.

(6) A Michelle P. waiver provider shall use a MAP-24 to notify the department of a Michelle P. service recipient's:

(a) Termination from the Michelle P. waiver program; or

(b) 1. Admission to an ICF-MR-DD or nursing facility for less than sixty (60) consecutive days;

2. Return to the Michelle P. waiver program from an ICF-MR-DD or nursing facility within sixty (60) consecutive days;

(c) Admission to a hospital; or

(d) Transfer to another waiver program within the department.

(7) Involuntary termination of a service to a Michelle P. recipient by a Michelle P. provider shall require:

(a) Simultaneous notice to the recipient or legal representative, the case manager or support broker, and the department at least

thirty (30) days prior to the effective date of the action, which shall include:

1. A statement of the intended action;

2. The basis for the intended action;

3. The authority by which the action is taken; and

4. The recipient's right to appeal the intended action through the provider's appeal or grievance process;

(b) Submittal of a MAP-24 to the department at the time of the intended action; and

(c) The case manager or support broker in conjunction with the provider to:

1. Provide the recipient with the name, address, and telephone number of each current provider in the state;

2. Provide assistance to the recipient in making contact with another provider;

3. Arrange transportation for a requested visit to a provider site;

4. Provide a copy of pertinent information to the recipient or legal representative;

5. Ensure the health, safety, and welfare of the recipient until an appropriate placement is secured;

6. Continue to provide supports until alternative services are secured; and

7. Provide assistance to ensure a safe and effective service transition.

Section 5. ICR-MR-DD Level of Care Criteria. (1) To meet ICF-MR-DD level of care criteria, an individual shall require physical or environmental management or rehabilitation and:

(a) Have a developmental disability or significantly sub-average intellectual functioning and require a planned program of active treatment to attain or maintain an optimal level of functioning;

(b) Require a protected environment while overcoming the effects of a developmental disability or sub-average intellectual functioning while:

1. Learning fundamental living skills;

2. Learning to live happily and safely within his or her limitations;

3. Obtaining educational experiences which will be useful in self-supporting activities; or

4. Increasing awareness of his or her environment; or

(c) Have a primary psychiatric diagnosis if:

1. Possessing care needs listed in paragraph (a) or (b);

2. The individual's mental care needs are adequately handled in an ICF-MR-DD; and

3. The individual does not require psychiatric inpatient treatment.

(2) An individual who does not require a planned program of active treatment to attain or maintain an optimal level of functioning shall not meet ICF-MR-DD level of care criteria.

(3) The department shall not determine that an individual fails to meet ICF-MR-DD level of care criteria solely due to the individual's age, length of stay in an institution, or history of previous institutionalization if the individual meets the criteria established in subsection (1) of this section.

Section 6. Enrollment. (1) The department shall enroll an individual on a 1st priority basis if the individual:

(a) Has an urgent need pursuant to 907 KAR 1:145, section 7(7)(b), regardless of whether the individual is on the SCL waiting list; and

(b) Meets the eligibility criteria established in Section 4 of this administrative regulation.

(2) After all first priority basis individuals have been enrolled, the department shall enroll remaining SCL waiting list individuals who meet the eligibility criteria established in Section 4 of this administrative regulation in accordance with the SCL waiting list provisions established in 907 KAR 1:145, Section 7.

(3) After all individuals have been enrolled pursuant to subsections (1) and (2) of this Section, the department shall utilize a first come, first served priority basis to enroll an individual who meets the eligibility criteria established in Section 4 of this administrative regulation.



Section 7. Covered Services. (1) A Michelle P. waiver service shall:

(a) Be prior authorized by the department to ensure that the service or modification of the service meets the needs of the Michelle P. recipient;

(b) Be provided pursuant to a plan of care or, for a CDO service, pursuant to a plan of care and support spending plan;

(c) Except for a CDO service, not be provided by a member of the Michelle P. recipient's family. A CDO service may be provided by a Michelle P. recipient's family member; and

(d) Shall be accessed within sixty (60) days of the date of prior authorization.

(2) To request prior authorization, a provider shall submit a completed MAP 10, MAP 109, and MAP 351 to the department.

(3) Covered Michelle P. waiver services shall include:

(a) A comprehensive assessment which shall:

1. Be completed by the department;

2. Identify a Michelle P. waiver recipient's needs and the services the Michelle P. waiver recipient or the recipient's family cannot manage or arrange for on the recipient's behalf;

3. Evaluate a Michelle P. waiver recipient's physical health, mental health, social supports, and environment;

4. Be requested by an individual seeking Michelle P. waiver services or the individual's family, legal representative, physician, physician assistant, QMRP, or ARNP;

5. Be conducted by an assessment team; and

6. Include at least one (1) face-to-face home visit by a member of the assessment team with the Michelle P. waiver recipient and, if appropriate, the recipient's family;

(b) A reassessment service which shall:

1. Be completed by the department;

2. Determine the continuing need for Michelle P. waiver services and, if appropriate, CDO services;

3. Be performed at least every twelve (12) months;

4. Be conducted using the same procedures used in an assessment service; and

5. Not be retroactive;

(c) A case management service which shall:

1. Consist of coordinating the delivery of direct and indirect services to a Michelle P. waiver recipient;

2. Be provided by a case manager who shall:

a. Arrange for a service but not provide a service directly;

b. Contact the Michelle P. waiver recipient monthly through a face-to-face visit at the Michelle P. recipient's home, in the ADHC center, or the adult day training provider's location.

c. Assure that service delivery is in accordance with a Michelle P. waiver recipient's plan of care;

d. Have a bachelor's degree from an accredited institution in a human services field and be supervised by:

(i) A QMRP;

(ii) A registered nurse who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability;

(iii) An individual with a bachelor's degree in a human service field who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability;

(iv) A qualified social worker who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability;

(v) A licensed marriage and family therapist who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability;

(vi) A licensed professional clinical counselor who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability;

(vii) A certified psychologist who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability; or

(viii) A licensed psychological practitioner at least two (2) years of experience working with individuals with mental retardation or a developmental disability;

e. Be an RN;

f. Be an LPN;

g. Be a qualified social worker;

h. Be an LMFT;

i. Be an LPCC;

j. Be a certified psychologist; or

k. Be a licensed psychological practitioner;

3. Not include a group conference;

4. Include development of a plan of care that shall:

a. Be completed on the MAP 109 using person-centered guiding principles;

b. Reflect the needs of the Michelle P. recipient;

c. List goals, interventions, and outcomes;

d. Specify services needed;

e. Determine the amount, frequency, and duration of services;

f. Provide for reassessment at least every twelve (12) months;

g. Be developed and signed by the case manager and Michelle P. waiver recipient, family member, or legal representative; and

h. Be submitted to the department no later than thirty (30) calendar days after receiving the department's approval of ICF-MR-DD level of care;

5. Include documentation with a detailed monthly summary note which includes:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care;

c. The signature, date of signature, and title of the individual preparing the note; and

d. Documentation of at least one (1) face-to-face meeting between the case manager and Michelle P. waiver recipient, family member, or legal representative; and

6. Include requiring a Michelle P. recipient or legal representative to sign a MAP-350 form at the time of application or reapplication and at each recertification to document that the individual was informed of the choice to receive Michelle P. waiver or institutional services;

(d) A homemaker service which shall consist of general household activities and shall:

1. Be provided by direct-care staff;

2. Be provided to a Michelle P. waiver recipient:

a. Who is functionally unable, but would normally perform age-appropriate homemaker tasks; and

b. If the caregiver regularly responsible for homemaker activities is temporarily absent or functionally unable to manage the homemaking activities; and

3. Include documentation with a detailed note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and

c. The signature, date of signature, and title of the individual preparing the note;

(e) A personal care service which shall:

1. Be age appropriate;

2. Consist of assisting a recipient with eating, bathing, dressing, personal hygiene, or other activities of daily living;

3. Be provided by direct-care staff;

4. Be provided to a Michelle P. recipient:

a. Who does not need highly skilled or technical care;

b. For whom services are essential to the recipient's health and welfare and not for the recipient's family; and

c. Who needs assistance with age-appropriate activities of daily living; and

5. Include documentation with a detailed note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care;

c. The signature, date of signature, and title of the individual preparing the note; and

d. The beginning and ending time of service;

(f) An attendant care service which shall consist of hands-on care that is:

1. Provided by direct-care staff to a Michelle P. waiver recipient

who:

- a. Is medically stable but functionally dependent and requires care or supervision twenty-four (24) hours per day; and
- b. Has a family member or other primary caretaker who is employed and not able to provide care during working hours;
2. Not of a general housekeeping nature;
3. Not provided to a Michelle P. waiver recipient who is receiving any of the following Michelle P. waiver services:
  - a. Personal care;
  - b. Homemaker;
  - c. ADHC;
  - d. Adult day training;
  - e. Community living supports; or
  - f. Supported employment; and
4. Include documentation with a detailed note which shall include:
  - a. The month, day, and year for the time period each note covers;
  - b. Progression, regression, and maintenance toward outcomes identified in the plan of care;
  - c. The signature, date of signature, and title of the individual preparing the note; and
  - d. Beginning and ending time of service;
- (g) A respite care service which shall be short term care based on the absence or need for relief of the primary caretaker and be:
  1. Provided by direct-care staff who provide services at a level which appropriately and safely meet the medical needs of the Michelle P. waiver recipient in the following settings:
    - a. The Michelle P. waiver recipient's place of residence; or
    - b. An ADHC center during posted hours of operation;
  2. Provided to a Michelle P. waiver recipient who has care needs beyond normal baby sitting; and
  3. Used no less than every six (6) months;
  4. Provided in accordance with 902 KAR 20:066, Section 2(1)(b)10a through c, if provided to a child under age 21 (twenty-one) in an ADHC center; and
  5. Include documentation with a detailed note which shall include:
    - a. The month, day, and year for the time period each note covers;
    - b. Progression, regression, and maintenance toward outcomes identified in the plan of care;
    - c. The signature, date of signature, and title of the individual preparing the note; and
    - d. The beginning and ending time of service;
- (h) An environmental and minor home adaptation service which shall be a physical adaptation to a home that is necessary to ensure the health, welfare, and safety of a Michelle P. waiver recipient and which shall:
  1. Meet all applicable safety and local building codes;
  2. Relate strictly to the Michelle P. waiver recipient's disability and needs;
  3. Exclude an adaptation or improvement to a home that has no direct medical or remedial benefit to the Michelle P. waiver recipient;
  4. Be submitted on form MAP-95 for prior authorization; and
  5. Include documentation with a detailed note which shall include:
    - a. The month, day, and year for the time period each note covers;
    - b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and
    - c. The signature, date of signature, and title of the individual preparing the note;
- (i) Occupational therapy which shall be:
  1. A physician ordered evaluation of a Michelle P. recipient's level of functioning by applying diagnostic and prognostic tests;
  2. Physician-ordered services in a specified amount and duration to guide a Michelle P. waiver member in the use of therapeutic, creative, and self-care activities to assist the recipient in obtaining the highest possible level of functioning;
  3. Training of other Michelle P. waiver providers on improving the level of functioning;
  4. Exclusive of maintenance or the prevention of regression;

5. Provided by an occupational therapist or an occupational therapy assistant supervised by an occupational therapist in accordance with 201 KAR 28:130; and
6. Documented with a detailed staff note which shall include:
  - a. The month, day, and year for the time period each note covers;
  - b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and
  - c. The signature, date of signature, and title of the individual preparing the note;
- (j) Physical therapy which shall be:
  1. A physician-ordered evaluation of a Michelle P. waiver recipient by applying muscle, joint, and functional ability tests;
  2. Physician-ordered treatment in a specified amount and duration to assist a Michelle P. waiver recipient in obtaining the highest possible level of functioning;
  3. Training of other Michelle P. waiver providers on improving the level of functioning;
  4. Exclusive of maintenance or the prevention of regression;
  5. Provided by a physical therapist or a physical therapist assistant supervised by a physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:020; and
  6. Documented with a detailed monthly summary note which include:
    - a. The month, day, and year for the time period each note covers;
    - b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and
    - c. The signature, date of signature, and title of the individual preparing the note;
- (k) Speech therapy which shall be:
  1. A physician-ordered evaluation of a Michelle P. waiver recipient with a speech or language disorder;
  2. A physician-ordered habilitative service in a specified amount and duration to assist a Michelle P. waiver recipient with a speech and language disability in obtaining the highest possible level of functioning;
  3. Training of other Michelle P. waiver providers on improving the level of functioning;
  4. Provided by a speech-language pathologist; and
  5. Documented with a detailed monthly summary note which include:
    - a. The month, day, and year for the time period each note covers;
    - b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and
    - c. The signature, date of signature, and title of the individual preparing the note;
- (l) An adult day training service which shall:
  1. Support the Michelle P. waiver recipient in daily, meaningful routines in the community;
  2. Stress training in:
    - a. The activities of daily living;
    - b. Self-advocacy;
    - c. Adaptive and social skills; and
    - d. Vocational skills;
  3. Be provided in a community setting which may:
    - a. Be a fixed location; or
    - b. Occur in public venues;
  4. Not be diversional in nature;
  5. If provided on site:
    - a. Include facility-based services provided on a regularly-scheduled basis;
    - b. Lead to the acquisition of skills and abilities to prepare the recipient for work or community participation; or
    - c. Prepare the recipient for transition from school to work or adult support services;
  6. If provided off site:
    - a. Shall:
      - (i) Include services provided in a variety of community settings;
      - (ii) Provide access to community-based activities that cannot be provided by natural or other unpaid supports;
      - (iii) Be designed to result in increased ability to access community resources without paid supports; and

(iv) Provide the opportunity for the recipient to be involved with other members of the general population; and

b. May be provided as:

(i) An enclave or group approach to training in which recipients work as a group or dispersed individually throughout an integrated work setting with people without disabilities;

(ii) A mobile crew performing work in a variety of community businesses or other community settings with supervision by the provider; or

(iii) An entrepreneurial or group approach to training for participants to work in a small business created specifically by or for the recipient or recipients;

7. Ensure that any recipient performing productive work that benefits the organization, be paid commensurate with compensation to members of the general work force doing similar work;

8. Require that a Michelle P. waiver provider conduct, at least annually, an orientation informing the recipient of supported employment and other competitive opportunities in the community;

9. Be provided at a time mutually agreed to by the recipient and Michelle P. waiver provider;

10.a. Be provided to recipients age twenty-two (22) or older; or

b. Be provided to recipients age sixteen (16) to twenty-one (21) as a transition process from school to work or adult support services;

11. Be documented with:

a. A detailed monthly summary note which shall include:

(i) The month, day, and year for the time period each note covers;

(ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and

(iii) The signature, date of signature, and title of the individual preparing the note; and

b. A time and attendance record which shall include:

(i) The date of service;

(ii) The beginning and ending time of the service;

(iii) The location of the service; and

(iv) The signature, date of signature, and title of the individual providing the service;

(m) A supported employment service which shall:

1. Be intensive, ongoing support for a Michelle P. waiver recipient to maintain paid employment in an environment in which an individual without a disability is employed;

2. Include attending to a recipient's personal care needs;

3. Be provided in a variety of settings;

4. Be provided on a one-to-one basis;

5. Be unavailable under a program funded by either 29 U.S.C. Chapter 16 or 34 C.F.R. Subtitle B, Chapter III, proof of which shall be documented in the Michelle P. waiver recipient's file;

6. Exclude work performed directly for the supported employment provider;

7. Be provided by a staff person who has completed a supported employment training curriculum conducted by staff of the cabinet or its designee;

8. Be documented by:

a. A detailed monthly summary note which shall include:

(i) The month, day, and year for the time period each note covers;

(ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and

(iii) The signature, date of signature, and title of the individual preparing the note; and

b. A time and attendance record which shall include:

(i) The date of service;

(ii) The beginning and ending time of the service;

(iii) The location of the service; and

(iv) The signature, date of signature, and title of the individual providing the service;

(n) A behavioral support service which shall:

1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;

2. Be provided to assist the Michelle P. waiver recipient to learn new behaviors that are directly related to existing challenging behaviors or functionally equivalent replacement behaviors for identified challenging behaviors;

3. Include a functional assessment of the Michelle P. waiver recipient's behavior which shall include:

a. An analysis of the potential communicative intent of the behavior;

b. The history of reinforcement for the behavior;

c. Critical variables that preceded the behavior;

d. Effects of different situations on the behavior; and

e. A hypothesis regarding the motivation, purpose, and factors which maintain the behavior;

4. Include the development of a behavioral support plan which shall:

a. Be developed by the behavioral specialist;

b. Be implemented by Michelle P. waiver provider staff in all relevant environments and activities;

c. Be revised as necessary;

d. Define the techniques and procedures used;

e. Be designed to equip the recipient to communicate his or her needs and to participate in age-appropriate activities;

f. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;

g. Reflect the use of positive approaches; and

h. Prohibit the use of restraints, seclusion, corporal punishment, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;

5. Include the provision of training to other Michelle P. waiver providers concerning implementation of the behavioral support plan;

6. Include the monitoring of a Michelle P. recipient's progress which shall be accomplished by:

a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and

b. The reports of a Michelle P. waiver provider involved in implementing the behavior support plan;

7. Provide for the design, implementation, and evaluation of systematic environmental modifications;

8. Be provided by a behavior support specialist;

9. Be documented by a detailed staff note which shall include:

a. The date of service;

b. The beginning and ending time; and

c. The signature, date of signature, and title of the behavioral specialist;

(o) An ADHC service which shall:

1. Be provided to a Michelle P. waiver recipient who is at least twenty-one (21) years of age;

2. Include the following basic services and necessities provided to Medicaid waiver recipients during the posted hours of operation:

a. Skilled nursing services provided by an RN or LPN, including ostomy care, urinary catheter care, decubitus care, tube feeding, venipuncture, insulin injections, tracheotomy care, or medical monitoring;

b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;

c. Snacks;

d. Supervision by an RN;

e. Age and diagnosis appropriate daily activities; and

f. Routine services that meet the daily personal and health care needs of a Michelle P. waiver recipient, including:

(i) Monitoring of vital signs;

(ii) Assistance with activities of daily living; and

(iii) Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by a Michelle P. waiver recipient;

3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the ADHC center;

4. Include respite care services pursuant to paragraph (g) of this subsection;

5. Be provided to a Michelle P. waiver recipient by the health team in an ADHC center which may include:

a. A physician;

b. A physician assistant;

- c. An ARNP;
  - d. An RN;
  - e. An LPN;
  - f. An activities director;
  - g. A physical therapist;
  - h. A physical therapist assistant;
  - i. An occupational therapist;
  - j. An occupational therapist assistant;
  - k. A speech pathologist;
  - l. A social worker;
  - m. A nutritionist;
  - n. A health aide;
  - o. An LPCC;
  - p. An LMFT;
  - q. A certified psychologist with autonomous functioning; or
  - r. A licensed psychological practitioner; and
6. Be provided pursuant to a plan of treatment. The plan of treatment shall:
- a. Be developed and signed by each member of the plan of treatment team which shall include the recipient or a legal representative of the recipient;
  - b. Include pertinent diagnoses, mental status, services required, frequency of visits to the ADHC center, prognosis, rehabilitation potential, functional limitation, activities permitted, nutritional requirements, medication, treatment, safety measures to protect against injury, instructions for timely discharge, and other pertinent information; and
  - c. Be developed annually from information on the MAP 351 and revised as needed; and
- (p) Community living supports which shall:
- 1. Be provided to facilitate independence and promote integration into the community for an SCL recipient residing in his or her own home or in his or her family's home;
  - 2. Be supports and assistance which shall be related to chosen outcomes and not be diversional in nature. This may include:
    - a. Routine household tasks and maintenance;
    - b. Activities of daily living;
    - c. Personal hygiene;
    - d. Shopping;
    - e. Money management;
    - f. Medication management;
    - g. Socialization;
    - h. Relationship building;
    - i. Leisure choices;
    - j. Participation in community activities;
    - k. Therapeutic goals; or
    - l. Nonmedical care not requiring nurse or physician intervention;
  - 3. Not replace other work or day activities;
  - 4. Be provided on a one-on-basis;
  - 5. Not be provided at an adult day-training or children's day-habilitation site;
  - 6. Be documented by:
    - a. A time and attendance record which shall include:
      - (i) The date of the service;
      - (ii) The beginning and ending time of the service; and
      - (iii) The signature, date of signature and title of the individual providing the service; and
    - b. A detailed monthly summary note which shall include:
      - (i) The month, day, and year for the time period each note covers;
      - (ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and
      - (iii) The signature, date of signature, and title of the individual preparing the summary note; and
  - 7. Be limited to sixteen (16) hours per day alone or in combination with adult day training, children's day habilitation, and supported employment.

Section 8. Consumer-Directed Option. (1) Covered services and supports provided to a Michelle P. waiver recipient participating in CDO shall be nonmedical and include:

- (a) A home and community support service which shall:
  - 1. Be available only under the consumer-directed option;

- 2. Be provided in the consumer's home or in the community;
  - 3. Be based upon therapeutic goals and not diversional in nature; and
  - 4. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO Michelle P. waiver services;
- (b) Goods and services which shall:
- 1. Be individualized;
  - 2. Be utilized to reduce the need for personal care or to enhance independence within the home or community of the recipient;
  - 3. Not include experimental goods or services; and
  - 4. Not include chemical or physical restraints;
- (c) A community day support service which shall:
- 1. Be available only under the consumer-directed option;
  - 2. Be provided in a community setting;
  - 3. Be tailored to the consumer's specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the consumer for work or community activities, socialization, leisure, or retirement activities;
  - 4. Be based upon therapeutic goals and not be diversional in nature; and
  - 5. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO Michelle P. waiver services; or
- (d) Financial management which shall:
- 1. Include managing, directing, or dispersing a consumer's funds identified in the consumer's approved CDO budget;
  - 2. Include payroll processing associated with the individuals hired by a consumer or consumer's representative;
  - 3. Include withholding local, state, and federal taxes and making payments to appropriate tax authorities on behalf of a consumer;
  - 4. Be performed by an entity:
    - a. Enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and
    - b. With at least two (2) years of experience working with the Michelle P. services target population;
  - 5. Include preparing fiscal accounting and expenditure reports for:
    - a. A consumer or consumer's representative; and
    - b. The department.
- (2) To be covered, a CDO service shall be specified in a plan of care.
- (3) Reimbursement for a CDO service shall not exceed the department's allowed reimbursement for the same or similar service provided in a non-CDO Michelle P waiver setting.
- (4) A consumer, including a married consumer, shall choose providers and a consumer's choice shall be reflected or documented in the plan of care.
- (5) A consumer may designate a representative to act on the consumer's behalf. The CDO representative shall:
- (a) Be twenty-one (21) years of age or older;
  - (b) Not be monetarily compensated for acting as the CDO representative or providing a CDO service; and
  - (c) Be appointed by the consumer on a MAP 2000 form.
- (6) A consumer may voluntarily terminate CDO services by completing a MAP 2000 and submitting it to the support broker.
- (7) The department shall immediately terminate a consumer from CDO services if:
- (a) Imminent danger to the consumer's health, safety, or welfare exists;
  - (b) The consumer fails to pay patient liability;
  - (c) The recipient's plan of care indicates he or she requires more hours of service than the program can provide; thus, jeopardizing the recipient's safety and welfare due to being left alone without a caregiver present; or
  - (d) The recipient, caregiver, family, or guardian threaten or intimidate a support broker or other CDO staff.
- (8) The department may terminate a consumer from CDO services if it determines that the consumer's CDO provider has not adhered to the plan of care.
- (9) Prior to a consumer's termination from CDO services, the support broker shall:

(a) Notify the assessment or reassessment service provider of potential termination;

(b) Assist the consumer in developing a resolution and prevention plan;

(c) Allow at least thirty (30) but no more than ninety (90) days for the consumer to resolve the issue, develop and implement a prevention plan, or designate a CDO representative;

(d) Complete, and submit to the department, a MAP 2000 terminating the consumer from CDO services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and

(e) Assist the consumer in transitioning back to traditional Michelle P. waiver services.

(10) Upon an involuntary termination of CDO services, the department shall:

(a) Notify a consumer in writing of its decision to terminate the consumer's CDO participation; and

(b) Except in a case where a consumer failed to pay patient liability, inform the consumer of the right to appeal the department's decision in accordance with Section 13 of this administrative regulation.

(11) A CDO provider shall:

(a) Be selected by the consumer;

(b) Submit a completed Kentucky Consumer Directed Option Employee Provider Contract to the support broker;

(c) Be eighteen (18) years of age or older;

(d) Be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;

(e) Be able to communicate effectively with the consumer, consumer representative, or family;

(f) Be able to understand and carry out instructions;

(g) Be able to keep records as required by the consumer;

(h) Submit to a criminal background check;

(i) Submit to a check of the nurse aide abuse registry maintained in accordance with 906 KAR 1:100 and not be found on the registry;

(j) Not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165(1) through (3);

(k) Complete training on the reporting of abuse, neglect, or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the consumer;

(l) Be approved by the department;

(m) Maintain and submit timesheets documenting hours worked; and

(n) Be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the consumer.

(12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of children who receive waiver services.

(13)(a) The department shall establish a six (6) month budget for a consumer based on the consumer's plan of care.

(b) A consumer's six (6) month budget shall not exceed \$20,000 unless:

1. The consumer's support broker requests a budget adjustment to a level higher than \$20,000; and

2. The department approves the adjustment.

(c) The department shall consider the following factors in determining whether to grant a six (6) month budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization;

2. The cost effectiveness of the proposed services;

3. Protection of the consumer's health, safety, and welfare; and

4. If a significant change has occurred in the recipient's:

a. Physical condition, resulting in additional loss of function or limitations to activities of daily living and instrumental activities of daily living;

b. Natural support system; or

c. Environmental living arrangement, resulting in the recipient's relocation.

(14) Unless approved by the department pursuant to subsection (13)(a) through (c) of this section, if a CDO service is expanded to a point in which expansion necessitates a six (6) month budget increase, the entire service shall only be covered via tradi-

tional (non-CDO) waiver services.

(15) A support broker shall:

(a) Provide needed assistance to a consumer with any aspect of CDO or blended services;

(b) Be available to a consumer twenty-four (24) hours per day, seven (7) days per week;

(c) Comply with all applicable federal and state laws and requirements;

(d) Continually monitor a consumer's health, safety, and welfare; and

(e) Complete or revise a plan of care using person-centered planning principles.

(16)(a) For a CDO participant, a support broker may conduct an assessment or reassessment; and

(b) A CDO assessment or reassessment performed by a support broker shall comply with the assessment or reassessment provisions established in this administrative regulation.

Section 9. Annual Expenditure Limit Per Individual. (1) The department shall have an annual expenditure limit per individual receiving services via this administrative regulation.

(2) The limit referenced in subsection (1) of this section:

(a) Shall be an overall limit applied to all services whether CDO services, Michelle P. services not provided via CDO, or a combination of CDO and Michelle P. services; and

(b) Shall equal \$63,000 per year.

Section 10. Incident Reporting Process. (1) An incident shall be documented on an incident report form.

(2) There shall be three (3) classes of incidents including:

(a) A class I incident which shall:

1. Be minor in nature and not create a serious consequence;

2. Not require an investigation by the provider agency;

3. Be reported to the case manager or support broker within twenty-four (24) hours;

4. Be reported to the guardian as directed by the guardian; and

5. Be retained on file at the provider and case management or support brokerage agency.

(b) A class II incident which shall:

1. Be serious in nature;

2. Involve the use of physical or chemical restraints;

3. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery;

4. Be reported by the provider agency to:

a. The case manager or support broker within twenty-four (24) hours;

b. The guardian within twenty-four (24) hours;

c. The department within ten (10) calendar days of discovery, and shall include a complete written report of the incident investigation and follow up; and

(c) A class III incident which shall:

1.a. Be grave in nature;

b. Involve suspected abuse, neglect, or exploitation;

c. Involve a medication error which requires a medical intervention; or

d. Be a death.

2. Be immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and

3. Be reported by the provider agency to:

a. The case manager or support broker within eight (8) hours of discovery;

b. DCBS immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209;

c. The guardian within eight (8) hours of discovery; and

d. The department within eight (8) hours of discovery and shall include a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. If an incident occurs after 5 p.m. on a weekday or occurs on a weekend or holiday, notification to the department shall occur on the following business day.

(3) Documentation with a complete written report for a death shall include:

(a) The recipient's current plan of care;

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- (b) The recipient's current list of prescribed medications including pro re nata (PRN) medications;
  - (c) The recipient's current crisis plan;
  - (d) Medication administration review forms for the current and previous month;
  - (e) Staff notes from the current and previous month including details of physician and emergency room visits;
  - (f) Any additional information requested by the department;
  - (g) A coroner's report when received; and
  - (h) If performed, an autopsy report when received.
- (4) All medication errors shall be reported to the department on a monthly medication error report form by the 15th of the following month.

Section 11. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A home health provider that chooses to use electronic signatures shall:

- (a) Develop and implement a written security policy that shall:
  - 1. Be adhered to by each of the provider's employees, officers, agents, and contractors;
  - 2. Identify each electronic signature for which an individual has access; and
  - 3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
- (b) Develop a consent form that shall:
  - 1. Be completed and executed by each individual using an electronic signature;
  - 2. Attest to the signature's authenticity; and
  - 3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and
- (c) Provide the department with:
  - 1. A copy of the provider's electronic signature policy;
  - 2. The signed consent form; and
  - 3. The original filed signature immediately upon request.

Section 12. Reimbursement. (1) The following Michelle P. waiver services, alone or in any combination, are limited to forty (40) hours per calendar week:

- (a) Homemaker;
- (b) Personal care;
- (c) Attendant care;
- (d) Supported employment;
- (e) Adult day health care;
- (f) Adult day training;
- (g) Community living supports;
- (h) Physical therapy;
- (i) Occupational therapy;
- (j) Speech therapy; and
- (k) Behavior supports.

(2) Respite services shall not exceed \$4,000 per member, per calendar year.

(3) Environmental and minor home adaptation services shall not exceed \$500 per member, per calendar year.

(4)(a) The department shall reimburse for a Michelle P. waiver service at the lesser of billed charges or the fixed upper payment rate for each unit of service.

(b) The following rates shall be the fixed upper payment rate limits:

Service	Fixed Payment Limit	Upper Rate	Unit of Service
Case Management	\$200.00		1 month
Respite	\$4,000 per calendar year		15 minutes
Homemaker	\$6.50		15 minutes
Personal Care	\$7.50		15 minutes
Attendant Care	\$2.90		15 minutes
Supported Employ-	\$5.54		15 minutes

ment		
Adult Day Health Care	\$2.57	15 minutes
Adult Day Training	\$2.75	15 minutes
Community Living Supports	\$5.54	15 minutes
Physical Therapy	\$22.17	15 minutes
Occupational Therapy	\$22.17	15 minutes
Speech Therapy	\$22.17	15 minutes
Behavior Supports	\$33.25	15 minutes
Environmental and Minor Home Adaptation	\$500 per calendar year	
Financial Management	\$12.50 (not to exceed eight (8) units or \$100.00 per month)	15 minutes
Support Broker	\$265.00	One (1) month

Section 13. Appeal Rights. An appeal of a department determination regarding ICF-MR-DD level of care or services to a Michelle P. waiver recipient or a consumer shall be in accordance with 907 KAR 1:563.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Person Centered Planning: Guiding Principles", March 2005 edition;
- (b) "MAP-24, The Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Community Based Services Memorandum", February 2001 edition;
- (f) "MAP-95 Request for Equipment Form" June 2007 edition;
- (g) "MAP 109, Plan of Care/Prior Authorization for Waiver Services", March 2007 edition;
- (h) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", January 2000 edition;
- (i) "MAP-351, The Department for Medicaid Services, Medicaid Waiver Assessment", March 2007 edition;
- (j) "MAP 2000, Initiation/Termination of Consumer Directed Option (CDO)", March 2007, edition; and
- (k) "MAP-10, Waiver Services", March 2007 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ELIZABETH A. JOHNSON, Commissioner  
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 16, 2008

FILED WITH LRC: July 17, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 22, 2008 at 9 a.m. in the Cabinet for Health and Family Services, Office of the Ombudsman's Conference Room Located on the First Floor at 1E-B; 275 East Main Street; Frankfort, Kentucky; 40621. Individuals interested in attending this hearing shall notify this agency in writing by September 15, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business September 30, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Kristina Hayden (502) 564-6204

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions for Michelle P. waiver service coverage and reimbursement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with an order issued by the Honorable Joseph M. Hood, United States District Court, Eastern District of Kentucky at Frankfort in response to the civil suit, Michelle P., by her next friend, Jim Deisenroth, et. al. v. Janie Miller, Secretary, Kentucky Cabinet for Health and Family Services, in her official capacity, et. al., Civil Action No. 02-23-JMH.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the provisions for Michelle P. waiver service coverage and reimbursement in compliance with an order issued by the Honorable Joseph M. Hood, United States District Court, Eastern District of Kentucky at Frankfort in response to the civil suit, Michelle P., by her next friend, Jim Deisenroth, et. al. v. Janie Miller, Secretary, Kentucky Cabinet for Health and Family Services, in her official capacity, et. al., Civil Action No. 02-23-JMH.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the provisions for Michelle P. waiver service coverage and reimbursement in compliance with an order issued by the Honorable Joseph M. Hood, United States District Court, Eastern District of Kentucky at Frankfort in response to the civil suit, Michelle P., by her next friend, Jim Deisenroth, et. al. v. Janie Miller, Secretary, Kentucky Cabinet for Health and Family Services, in her official capacity, et. al., Civil Action No. 02-23-JMH.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation is expected to affect thousands of individuals diagnosed with mental retardation or a developmental disability by providing community-based services in lieu of institutional care. This administrative regulation will allow qualified, Medicaid enrolled providers throughout the Commonwealth of Kentucky to provide services and receive corresponding reimbursement for services provided to qualifying enrolled individuals.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Those not enrolled as Medicaid providers who wish to provide Michelle P. services will have to enroll into the Medicaid program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This regulation should not impose additional costs on Medicaid providers. Organizations applying as new providers may incur new business start-up costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The new administrative regulation will provide services to citizens of the Commonwealth diagnosed with mental retardation or a developmental disability.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Departmental cost associated with this administrative regulation is difficult to project for the first fiscal year as costs is contingent upon several factors. Key factors include the number of individuals who enroll as well as the type and amount of services individuals receive. Services are provided in accordance with individualized plans of care which may vary substantially. Pursuant to the "Michelle P." settlement agreement, the Department for Medicaid Services (DMS) is committed to serving up to 3,000 individuals in the first year of the waiver should 3,000 present for services. As neither the number of individuals presenting for services nor the mix of services is predictable, the first fiscal year costs of the program is indeterminable. However, DMS estimates costs for an entire year of the program if operating at the initial full capacity level (3,000 individuals enrolled and receiving services) to be approximately \$66.5 million (state and federal funds combined.) Subsequent increases in capacity level, by fifty (50) percent in year two (2) followed by an additional fifty (50) percent increase in year three (3), would correspondingly increase the costs.

(b) On a continuing basis: Departmental cost associated with this administrative regulation is difficult to project for the first fiscal year as costs is contingent upon several factors. Key factors include the number of individuals who enroll as well as the type and amount of services individuals receive. Services are provided in accordance with individualized plans of care which may vary substantially. Pursuant to the "Michelle P." settlement agreement, the Department for Medicaid Services (DMS) is committed to serving up to 3,000 individuals in the first year of the waiver should 3,000 present for services. As neither the number of individuals presenting for services nor the mix of services is predictable, the first fiscal year costs of the program is indeterminable. However, DMS estimates costs for an entire year of the program if operating at the initial full capacity level (3,000 individuals enrolled and receiving services) to be approximately \$66.5 million (state and federal funds combined.) Subsequent increases in capacity level, by fifty (50) percent in year two (2) followed by an additional fifty (50) percent increase in year three (3), would correspondingly increase the costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: \$17.5 million has been allocated to the Department for Medicaid Services for the implementation of the Michelle P. waiver program. Of this \$17.5 million, approximately \$12 million will be from Title XIX federal funding and \$5 million will be general fund dollars. Departmental cost associated with this administrative regulation is difficult to project for the first fiscal year as costs is contingent upon several factors. Key factors include the number of individuals who enroll as well as the type and amount of services individuals receive. Services are provided in accordance with individualized plans of care which may vary substantially. Pursuant to the "Michelle P." settlement agreement, the Department for Medicaid Services (DMS) is committed to serving up to 3,000 individuals in the first year of the waiver should 3,000 present for services. As neither the number of individuals presenting for services nor the mix of services is predictable, the first fiscal year costs of the program is indeterminable. However, DMS estimates costs for an entire year of the program if operating at the initial full capacity level (3,000 individuals enrolled and receiving services) to be approximately \$66.5 million (state and federal funds combined.) Subsequent increases in capacity level, by fifty (50) percent in year two (2) followed by an additional fifty (50) percent increase in year three (3), would correspondingly increase the costs.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect each Medicaid eligible individual diagnosed with mental retardation or development disability choosing to access services through the Michelle P. waiver program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This action is necessary to comply with an order issued by the Honorable Joseph M. Hood, United States District Court, Eastern District of Kentucky at Frankfort in response to the civil suit, Michelle P., by her next friend, Jim Deisenroth, et. al. v. Janie Miller, Secretary, Kentucky Cabinet for Health and Family Services, in her official capacity, et. al., Civil Action No. 02-23-JMH.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate revenue for state or local government during the first year of program administration.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate revenue for state or local government during subsequent years of program administration.

(c) How much will it cost to administer this program for the first year? Departmental cost associated with this administrative regulation is difficult to project for the first fiscal year as costs is contingent upon several factors. Key factors include the number of individuals who enroll as well as the type and amount of services individuals receive. Services are provided in accordance with individualized plans of care which may vary substantially. Pursuant to the "Michelle P." settlement agreement, the Department for Medicaid Services (DMS) is committed to serving up to 3,000 individuals in the first year of the waiver should 3,000 present for services. As neither the number of individuals presenting for services nor the mix of services is predictable, the first fiscal year costs of the program is indeterminable. However, DMS estimates costs for an entire year of the program if operating at the initial full capacity level (3,000 individuals enrolled and receiving services) to be approximately \$66.5 million (state and federal funds combined.) Subsequent increases in capacity level, by fifty (50) percent in year two (2) followed by an additional fifty (50) percent increase in year three (3), would correspondingly increase the costs.

(d) How much will it cost to administer this program for subsequent years? Departmental cost associated with this administrative regulation is difficult to project for the first fiscal year as costs is contingent upon several factors. Key factors include the number of individuals who enroll as well as the type and amount of services individuals receive. Services are provided in accordance with individualized plans of care which may vary substantially. Pursuant to the "Michelle P." settlement agreement, the Department for Medicaid Services (DMS) is committed to serving up to 3,000 individuals in the first year of the waiver should 3,000 present for services. As neither the number of individuals presenting for services nor the mix of services is predictable, the first fiscal year costs of the program is indeterminable. However, DMS estimates costs for an entire year of the program if operating at the initial full capacity level (3,000 individuals enrolled and receiving services) to be ap-

proximately \$66.5 million (state and federal funds combined.) Subsequent increases in capacity level, by fifty (50) percent in year two (2) followed by an additional fifty (50) percent increase in year three (3), would correspondingly increase the costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.



**VOLUME 35, NUMBER 3 – SEPTEMBER 1, 2008**

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
Minutes of August 12, 2008**

The August meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, August 12, 2008 at 10:00 a.m., in Room 149 of the Capitol Annex. Senator Dick Roeding called the meeting to order, the roll call was taken. The minutes of the July 8, 2008 meeting were approved.

Present were:

Members: Senators Dick Roeding, Joey Pendleton, and Gary Tapp; and Representatives Robert Damron, Danny Ford, Jimmie Lee, and Ron Weston.

LRC Staff: Dave Nicholas, Donna Little, Sarah Amburgey, Emily Harkenrider, Laura Milam, Emily Caudill, Jennifer Beeler, and Laura Napier.

Guests: Melissa F. Justice, Kentucky Higher Education Assistance Authority; Cindy Owen, Alicia Sneed, Marilyn Troupe, Education Professional Standards Board; Mike Burnside, Gerri Miller, Eric Wampler, Kentucky Retirement Systems; Mark Dennen, Peggy Guier, Kentucky Heritage Council; Phillip Bettoli, David Casey, Dr. Jonathan Gassett, Bill James, Benjy Kinman, Catherine York, Department of Fish and Wildlife Resources; Tom Bloemer, Mark Farrow, Kentucky Department of Agriculture; Lona Brewer, Lora Gowins, Division for Air Quality; Kevin Brown, Larry Stinson, Department of Education; Malinda Shepherd, DJ Wasson, Department of Insurance; Rose Baker, Bob Benson, Dawn Bellis, Temple Juett, George Mann, Richard Molony, Jack Reckner, Russ Sanders, William Swope, Bob Weiss, Department of Housing, Buildings and Construction; Patricia Biggs, Stuart Owen, Department for Medicaid Services; Joyce Kinder, Steve Kinder.

**The Administrative Regulation Review Subcommittee met on Tuesday, August 12, 2008, and submits this report:**

**Administrative Regulations Reviewed by the Subcommittee:**

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: Kentucky Loan Program**

11 KAR 3:100. Administrative wage garnishment. Melissa F. Justice, senior associate counsel, represented the authority.

**EDUCATION PROFESSIONAL STANDARDS BOARD: Educator Preparation**

16 KAR 5:020. Standards for admission to educator preparation. Cindy Owen, director of professional learning assessment; Alicia A. Sneed, director of legal services; and Dr. Marilyn Troupe, director of education preparation, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 4 to specify the annual reporting requirements. Without objection, and with agreement of the agency, the amendments were approved.

**FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems: General Rules**

105 KAR 1:160. Sick Leave Plans. Mike Burnside, executive director; Geri Miller, chief benefits officer; and Eric Wampler, general counsel, represented the retirement systems.

105 KAR 1:170. Membership form requirements.

A motion was made and seconded to approve the following amendment: to amend Section 6 and Form 2010, incorporated by reference, to reflect the correct edition date. Without objection, and with agreement of the agency, the amendment was approved.

105 KAR 1:180. Death before retirement procedures.

105 KAR 1:200. Retirement procedures and forms.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to include

a statutory citation; and (2) to amend Sections 10 and 11 to make technical corrections and delete references to Form 6751 pursuant to KRS 61.637. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 1:210. Disability procedures.

A motion was made and seconded to approve the following amendment: to revise Section 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 1:220. Annual disability review.

A motion was made and seconded to approve the following amendment: to revise Sections 2 and 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 1:240. Death after retirement procedures.

105 KAR 1:270. Special federal income tax withholding.

105 KAR 1:310. Fred Capps Memorial Act.

In response to a question by Co-Chair Roeding, Mr. Wampler explained that the Fred Capps Memorial Act was named in honor of Prosecutor Fred Capps, who was murdered by a defendant he prosecuted. Mr. Wampler stated that the act provided benefits if a state employee member died or was injured in relation to the employee's duties.

A motion was made and seconded to approve the following amendment: to revise Section 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 1:330. Purchase of service credit.

105 KAR 1:360. Health and hospital insurance.

A motion was made and seconded to approve the following amendment: to revise Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 1:370. Kentucky Retirement Systems Personnel Policies.

A motion was made and seconded to approve the following amendment: to revise Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**TOURISM, ARTS, AND HERITAGE CABINET: Kentucky Heritage Council: Council**

300 KAR 6:020. Administration of Kentucky Rock Fence Preservation Program. Mark Dennen, interim executive director, and Peggy Guier, staff attorney, represented the council.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to insert a citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; (3) to amend the definitions of "standards for reconstruction" and "standards for restoration" to clarify that these standards included the requirements in Section 3 of this administrative regulation; (4) to amend Section 3 to: (a) delete the language of 36 C.F.R. 68(c) and (d) and reference the federal regulations instead; and (b) clarify that standards for reconstruction and restoration included both federal guidelines and the standards established in Section 3 of this administrative regulation; (5) to amend Section 9(3)(e) to clarify how a refund shall be determined if a transferee did not agree to maintain the fence; (6) to amend Section 9(3)(g) to clarify that an applicant shall obtain necessary local permits; and (7) to

amend Sections 1 through 5, 7, and 9 through 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**COMMERCE CABINET: Department of Fish and Wildlife Resources: Fish**

301 KAR 1:140. Special commercial fishing permit for Barkley and Kentucky Lakes. Dr. Jon Gassett, commissioner; Benji Kinman, director; and Catherine York, deputy general counsel, represented the department. Steve and Joyce Kinder, commercial fishermen, appeared in opposition to this administrative regulation and 301 KAR 1:146, 301 KAR 1:155, and 301 KAR 3:022.

Co-Chair Roeding stated that the commercial fishing and caviar industry were important to Kentucky's economy, and the Department for Fish and Wildlife Resources should assist this industry's growth.

Commissioner Gassett stated that the department wanted to move the commercial fishing industry forward in Kentucky and provide adequate protection for its resources. The department was required to certify to the United States Fish and Wildlife that adequate controls were in place for the long-term sustainability of the resources. Both Illinois and Indiana planned to mirror Kentucky's administrative regulations to provide regulatory consistency among those three states.

In response to a question by Co-Chair Roeding, Mr. Kinman stated that the need for a lottery for permits for the commercial harvesting of roe-bearing fish was a necessary fish management technique to protect roe-bearing species.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to insert a statutory citation; (2) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to make technical changes to conform to the reorganization authorized by Executive Order 2008-516; (3) to amend Sections 1 through 4, 7, and 8 to comply with the drafting and format requirements of KRS Chapter 13A; (4) to amend Section 5 to provide for two (2) unlicensed helpers; (5) to amend Section 8 to establish a first, second, and third reporting offense if a report was not submitted by the deadline before the permit is suspended and to provide that a two (2) year revocation shall occur if a commercial fisherman "knowingly" placed commercial fishing gear where prohibited or "knowingly" failed to report or falsified data; and (6) to amend Section 9 to update the material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 1:146. Commercial fishing gear.

Mrs. Kinder stated that she opposed this administrative regulation because it did not include snagging as a form of commercial fishing. Commercial fishermen needed this method to harvest roe-bearing species under certain weather and flooding conditions; however, she stated that the Department for Fish and Wildlife Resources had agreed to address snagging in the near future and she did not wish that the administrative regulation be found deficient because of the snagging issue.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to make technical changes to conform to the reorganization authorized by Executive Order 2008-516; (2) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (3) to amend Section 2 to reflect the extension in 301 KAR 1:155 of the roe-bearing fish harvester season; and (4) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 1:155. Commercial fishing requirements.

Mrs. Kinder stated that the 120 percent cap on future permits issued did not allow the industry to grow to reach its potential. Industry preferred a cap with a set number of additional permits, such as forty additional permits; however, she did not wish that the administrative regulation be found deficient because of the cap

issue. She stated that the revocation provisions were too severe and requested that a warning be issued for the first conviction and revocation for the second or subsequent convictions. She stated that if further compromise could not be reached she did not wish that the administrative regulation be found deficient because of the revocation issue, but that she wished to work with the department on this issue in the near future. She further stated that the Department of Fish and Wildlife Resources had agreed to issue a letter to all commercial fishermen to clarify that Kentucky commercial fishermen may use Ohio boat ramps and that the commercial fishermen expected the department to follow through with this agreement.

In response to questions by Senator Tapp, Mr. Moore stated that a permit would only be revoked upon conviction.

In response to questions by Senator Pendleton, Commissioner Gassett stated that a permit may be revoked for violating a boundary, such as the Ohio state boundary on the Ohio River or a boundary of an area where spawning occurred. Commissioner Gassett stated that a fine was not sufficient to deter illegal commercial fishing. He stated that the department revoked one license in the past three years. Mr. Kinman stated that the Ohio River has not been issued global positioning boundary coordinates recently and that the Kentucky Supreme Court ruled in 1980 that the official boundary line was the 1792 low water line, which meanders but which established ninety percent of the Ohio River as Kentucky water.

Co-Chair Damron stated that, since a conviction was required prior to a permit revocation, there was an established burden of proof. He further stated that the Department for Fish and Wildlife Resources probably would not catch the offender during the first offense, but that the offender had probably fished illegally in the past. He stated that the revocation was the current law and that amending it would result in the weakening of an existing administrative regulation.

Representative Weston stated that the five infractions that may lead to a conviction are legitimate matters that need to be enforced.

In response to questions by Co-Chair Roeding, Commissioner Gassett stated that restocking of roe-bearing species was not currently a viable option because it has not proven to be sustainable in a river system. Commissioner Gassett stated that he hoped the species would be self sustaining under these amendments. He stated that the United States Department of the Interior required these amendments to protect the species, whether Kentucky restocked or not, and that the United States Department of the Interior may prohibit exportation of caviar if these amendments did not become effective.

Co-Chair Roeding stated that the 120 percent cap on future permits issued was an issue and that, if Kentucky had fifty commercial roe-bearing fish harvesters in 2008, that would only establish ten new permits for 2009 and subsequent years. Mr. Kinman stated that the commercial permit would be on the open market for a thirty day period this year. The number of licenses issued this year would establish the baseline for determining the number available for future years.

In response to a question by Co-Chair Damron, Mr. Kinman stated that current testing of caviar for contaminants such as PCBs was not taking place at this time since testing was complaint driven, that the current results were three or four years old, but that the department planned to conduct another study this year. Mr. Kinman stated that caviar that exceeded the limit for PCBs could be confiscated and that the current recommendation was for six meals per year, but that women of child-bearing age and children under twelve should not consume caviar.

In response to questions by Representative Lee, Mr. Kinman stated that there was not a consumer advisory or warning on commercial packages of caviar, but that consumer notification was not the jurisdiction of the Department for Fish and Wildlife Resources.

In response to a question by Senator Tapp, Mr. Kinman stated that an endangered fish species caught by accident would not be subject to a citation from a conservation officer if the fish was thrown back into the water.

A motion was made and seconded to approve the following

amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; (2) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to make technical changes to conform to the reorganization authorized by Executive Order 2008-516; (3) to revise the definitions in Section 1; (4) to amend Section 2 to: (a) provide for two unlicensed helpers; and (b) include a cross reference to boating safety requirements; (5) to amend Sections 4 and 5 to create a new permitting scheme with a Roe-bearing Fish Harvester's Permit and a Roe-bearing Fish Buyer's Permit, which: (a) revise permit application, renewal, and issuance dates; (b) provide that the number of harvester's permits sold after the 2008 season shall not exceed 120 percent of the total number of permits sold in 2008; (c) provide for transfer of permits; (d) clarify the lottery drawing requirements; and (e) require a permit holder to produce records and reports for the inspection of a conservation officer without the permit officer necessarily entering the roe-processing facility; (6) to amend the paddlefish harvest season to November 1 through April 30 for all legal commercial fishing gear and May 1 through May 31 for commercial trotlines only in waters open to commercial fishing except the Ohio and Mississippi Rivers; (7) to amend Sections 1, 2, 4 through 10 and 12 to comply with the drafting and format requirements of KRS Chapter 13A; (8) to amend Section 11 to provide that permittees who failed to report on time shall: (a) be given a courtesy reminder the first time; (b) receive a warning letter the second time; and (c) have the permit suspended the third and subsequent times; (9) to amend Section 11 to establish that the department shall revoke the commercial fishing license or harvester's permit for "knowingly" having placed commercial fishing gear in a restricted area or falsified data; and (10) to amend Section 12 to: (a) establish that the GPS coordinates for boundary with Ohio on the Ohio River shall be available on the cabinet's Web site for downloading; and (b) incorporate the GPS coordinates by reference. Without objection, and with agreement of the agency, the amendments were approved.

#### **Hunting and Fishing**

301 KAR 3:022. License, tag, and permit fees.

Mrs. Kinder stated that the fees for the Roe-bearing Fish Harvester's Permit and the Roe-bearing Fish Buyer's Permit were too high for some fishermen; however, she did not wish that the administrative regulation be found deficient because of the fee issue.

In response to questions by Co-Chair Roeding, Commissioner Gassett stated that the amount of revenue the department expected to receive from the permit fees would not cover the costs for two conservation officers and that sport fishermen subsidized the enforcement of the commercial fishing administrative regulations. Commissioner Gassett also stated that the department's answers on the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT that costs would be very minimal was based on the diversion of funds from fees from sport fishing. He stated that the permit fees were comparable to surrounding states.

In response to a question by Senator Tapp, Commissioner Gassett stated that the five dollar fee for shooting preserves was for administrative costs and industry driven. Commissioner Gassett also stated that the fee change was made by the legislature.

Co-Chair Roeding objected to the amended administrative regulation because he stated the fees were too high.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to provide for the recent reorganization of the Commerce Cabinet into the Tourism, Arts, and Heritage Cabinet; (2) to amend Section 1 to change the name of the license to the "shooting area license" consistent with the statute; and (3) to amend Section 4 to change the name of the "Commercial Roe Dealer license" to the "Roe-bearing Fish Buyer's license". With the agreement of the agency, the amendments were approved.

#### **DEPARTMENT OF AGRICULTURE: Regulation and Inspection; Method of Sale**

302 KAR 76:110E. Temporary suspension for retail fuel

dispensers. Tom Bloemer, administrative branch manager, and Mark Farrow, deputy commissioner, represented the department.

#### **ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division for Air Quality: New Source Performance Standards**

401 KAR 60:021. Repeal of 401 KAR 60:020. Lona Brewer, PPA branch manager, and Lora Gowins, environmental control supervisor, represented the division.

#### **EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: Department of Education: School Administration and Finance**

702 KAR 3:270. SEEK funding formula. Kevin Brown, General Counsel, and Larry Stinson, associate commissioner, represented the department.

In response to a question by Senator Tapp, Mr. Stinson stated that the amendments deleted the approved method for evaluating real estate.

In response to a question by Representative Ford, Mr. Stinson stated that only the approved method for evaluating real estate was removed and that the other real estate provisions remained.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to insert statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; (3) to amend the definition of "Calculated Base SEEK Funding" to refer to "students with disabilities" instead of "exceptional children", in accordance with KRS 157.390(5); (4) to clarify definitions of "collection rate" and "LEP" and to add a definition for "maximum revenue collectible"; (5) to amend the format for various SEEK calculations established in Sections 2 and 3, to comply with KRS Chapter 13A formatting requirements and set forth the equations so the equations could be calculated correctly; (6) to amend Section 2(3) to delete the authorization of a recalculation of the SEEK allotment, to comply with KRS Chapter 157 and 2008 House Bill 406 (the budget bill); (7) to amend Section 2(5)(b) to delete language regarding the calculation of the value of real estate for the calculated SEEK portion, to comply with KRS Chapter 13A and HB 406; and (8) to amend Sections 1 through 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **PUBLIC PROTECTION CABINET: Department of Insurance: Trade Practices and Frauds**

806 KAR 12:180. Military sales practices. Malinda Shepherd, assistant director, and DJ Wasson, staff assistant, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1, 3, and 8 to make technical changes to conform to the reorganization authorized by Executive Order 2008-507; and (4) to amend Sections 1, 3, 4, 7, and 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Department of Housing, Buildings, and Construction: Building Code**

815 KAR 7:070. The Kentucky Certified Building Inspector Program. Rose Baker, staff; Dawn M. Bellis, general counsel; Richard Maloney, commissioner; George Mann, deputy commissioner; and William Swope, state fire marshal, represented the department.

A motion was made and seconded to approve the following amendment: to revise Sections 1 to 5 and 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments

were approved.

815 KAR 7:120. Kentucky Building Code. Bob Weiss, executive director, Home Builders Association of Kentucky, appeared in support of this administrative regulation and 815 KAR 7:125. The following people appeared in opposition to this administrative regulation and 815 KAR 7:125: Bob Benson, attorney, Jefferson County Fire Service; Temple Juett, general counsel, Kentucky League of Cities; Jack Reckner, fire chief, Kentucky Association of Fire Chiefs; and Russ Sanders, manager, National Fire Protection Association.

In response to a question by Representative Lee, Ms. Bellis stated that neither the building code nor the residential code affected exterior features, such as hydrants, but that they did affect inside codes, such as sprinkler systems. Mr. Mann stated that local governments could establish requirements for subdivisions plans.

In response to a question by Representative Weston, Ms. Bellis stated that the City of Louisville and other local governments could not require more stringent code standards than the Kentucky Building Code or the Kentucky Residential Code. Mr. Mann further stated that commercial and residential structures over two stories had to have sprinkler systems.

Russ Sanders stated that he opposed changes to this administrative regulation and 815 KAR 7:125 because the department should have stayed with the adoption of the 2008 National Electrical Code and should not have gone back to the 2005 standards. Mr. Sanders stated that all states that he was aware of, except Oregon, had adopted the 2008 National Electrical Code. He further stated that Kentucky had the ninth worst fire death rate in the United States.

In response to a question by Senator Tapp, Ms. Baker stated that the Electrical Advisory Committee voted unanimously to adopt the 2008 National Electrical Code, but the Kentucky Single-family Dwellings Advisory Committee voted three to two to adopt the 2008 National Electrical Code.

In response to questions by Senator Tapp, Mr. Sanders stated that studies did not suggest sump pump failures related to GFI equipment and that the 2005 National Electrical Code required arc-fault equipment in some areas. He also stated that, for life safety reasons, the minimum-maximum statewide code requirements should be rejected as three assumptions had to be true for the minimum-maximum statewide code requirements to not hinder safety: (1) all areas had to have similar resources; (2) all areas had to have similar life safety challenges; and (3) all areas had to have similar safety reviews.

Mr. Benson stated that adopting the minimum-maximum statewide code requirements conflicted with existing statutes and weakened life safety standards. Mr. Benson stated that the board was not given the authority by the legislature to limit safety standards and the phrase "mini-max" was not used in the statutes.

Mr. Reckner stated that the minimum-maximum statewide code requirements prevented local governments from attacking fire problems in local communities. He said that Kentucky has an educated fire service that is able to identify problems and could fix those problems if they were authorized to establish these additional requirements.

Mr. Juett stated that the Kentucky League of Cities supported Indian Hills and disagreed with the department that a maximum standard should be established for the statewide code. He said that establishing a minimum statewide standard was good policy; however, local governments should be allowed to protect local resources and establish more stringent requirements.

Mr. Weiss stated that home builders would have a hard time complying with numerous different codes throughout the state if each local government established different code provisions. KRS 198B.080 established the process for amending the codes and required that any amendment to the codes had to go through the KRS Chapter 13A process before becoming effective statewide.

In response to a question by Representative Lee, Subcommittee staff stated that only the General Assembly could amend KRS 198B.050, pertaining to the minimum-maximum statewide code requirements.

In response to questions by Representative Ford, Mr. Sanders stated that hundreds of local ordinances, including 46 in the

Chicago area, required sprinklers and that the cost was one to one and one-half percent of the total cost of building. Mr. Reckner stated that the cost for a sprinkler system was approximately one dollar and twenty-five cents per square foot.

In response to a question by Senator Tapp, Mr. Reckner stated that communities in areas of low water pressure may purchase modular systems to connect rural systems to sprinkler systems and did not need a connection to the local water supply.

Commissioner Maloney stated that Kentucky needed one standard code throughout the state. It would be hard for building inspectors and fire marshals to know 120 plus different codes. Ms. Bellis added that Louisville's ordinance voided any code that was different than the Kentucky Building Code. The agency needed to go back to the 2005 National Electrical Code because 815 KAR 10:060, the Kentucky Standards of Safety, adopted the 2005 edition of the code and there could not be a conflict between administrative regulations. Mr. Swope stated that the City of Louisville supported the statewide building code and that he has drafted language to amend 815 KAR 7:110 to further address this issue.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 3 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend the material incorporated by reference to delete the adoption of the 2008 edition of the National Electrical Code and to re-adopt the 2005 edition of that code. Without objection, and with agreement of the agency, the amendments were approved.

#### 815 KAR 7:125. Kentucky Residential Code.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 3 to comply with the drafting and format requirements of KRS Chapter 13A and (2) to amend the material incorporated by reference to delete the adoption of the 2008 edition of the National Electrical Code and to re-adopt the 2005 edition of that code. Without objection, and with agreement of the agency, the amendments were approved.

#### Electrical Inspectors

815 KAR 35:060. Licensing of electrical contractors, electricians, and master electricians pursuant to KRS 227A.060.

A motion was made and seconded to approve the following amendment: to revise Sections 2, 3, 4, 5, 7, 8, and 10 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### 815 KAR 35:100. Electrical continuing education procedure.

A motion was made and seconded to approve the following amendment: to revise the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Medicaid Services**

907 KAR 1:479. Durable medical equipment covered benefits and reimbursement. Patricia Biggs, nurse consultant inspector, and Stuart Owen, regulation coordinator, represented the department.

A motion was made and seconded to approve the following amendment: to revise Sections 1, 2, 3, and 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **OTHER BUSINESS:**

##### **Kentucky Board of Medical Licensure Guidelines**

Dave Nicholas, committee staff administrator, stated that the Kentucky Board of Medical Licensure would amend their guidelines to comply with KRS Chapter 13A.

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Senator Tapp expressed his thanks to the Kentucky Board of Medical Licensure and to the Kentucky Board of Nursing.

**The following administrative regulations were deferred to the September 9, 2008, meeting of the Subcommittee:**

**FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Forms**

103 KAR 3:050. Miscellaneous Taxes Forms manual.

**GENERAL GOVERNMENT CABINET: Kentucky Board of Veterinary Examiners: Board**

201 KAR 16:110. Prescriptions and dispensation of drugs for animal use.

**Kentucky Board of Social Work: Board**

201 KAR 23:015. Temporary permission to practice.

201 KAR 23:070. Qualifying education and qualifying experience under supervision.

**ENERGY AND ENVIRONMENT CABINET: Department of Environmental Protection: Division of Water: Water Quality Certification**

401 KAR 9:020. Section 401 Water Quality Certification fees.

**JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary**

501 KAR 6:200. Comprehensive sex offender presentence evaluation procedure.

**TRANSPORTATION CABINET: Department of Vehicle Regulation: Driver Improvement**

601 KAR 13:070. KRS 159.051. Compliance verification for a minor.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: Department of Education: School Terms, Attendance and Operation**

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

**PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Thoroughbred Racing**

810 KAR 1:015. Claiming races.

**CABINET FOR HEALTH AND FAMILY SERVICES: Office of the Secretary: E-Health**

900 KAR 7:020. Kentucky e-Health Corporation.

**The Subcommittee adjourned at 1:20 p.m. until September 9, 2008.**

OTHER COMMITTEE REPORTS

**COMPILER'S NOTE:** In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

**INTERIM JOINT COMMITTEE ON INTERIM JOINT COMMITTEE  
ON AGRICULTURE AND NATURAL RESOURCES  
(Meeting of August 21, 2008)**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Interim Joint Committee on Agriculture and Natural Resources for its meeting of August 21, 2008, having been referred to the Committee on August 6, 2008, pursuant to KRS 13A.290(6):

401 KAR 9:010 & E  
401 KAR 32:010  
401 KAR 32:050  
401 KAR 34:005  
401 KAR 32:080  
401 KAR 35:005  
401 KAR 35:080  
401 KAR 36:030  
401 KAR 37:005  
401 KAR 37:040  
401 KAR 38:005  
401 KAR 38:040  
401 KAR 43:005

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

**The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.**

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

**The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.**

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 21, 2008 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

## **CUMULATIVE SUPPLEMENT**

### **Locator Index - Effective Dates**

**C - 2**

The Locator Index lists all administrative regulations published in VOLUME 35 of the Administrative Register from July, 2008 through June, 2009. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 34 are those administrative regulations that were originally published in VOLUME 34 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2008 bound Volumes were published.

### **KRS Index**

**C - 7**

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 35 of the Administrative Register.

### **Subject Index**

**C - 14**

The Subject Index is a general index of administrative regulations published in VOLUME 35 of the Administrative Register, and is mainly broken down by agency.

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	34 Ky.R. Page No.	Effective Date	Regulation Number	34 Ky.R. Page No.	Effective Date
<b>VOLUME 34</b>					
The administrative regulations listed under VOLUME 34 are those administrative regulations that were originally published in Volume 33 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2007 bound Volumes were published.					
<b>EMERGENCY ADMINISTRATIVE REGULATIONS:</b>			201 KAR 21.095		
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)			Amended	1533	
103 KAR 3.010E	2066	2-11-08	201 KAR 23.015		
103 KAR 3.030E	2266	2-19-08	Amended	2423	
Replaced		7-7-08	201 KAR 23.070		
103 KAR 3.040E	1925	1-15-08	Amended	2424	
103 KAR 31:180E	1350	11-15-07	201 KAR 25.225		
Replaced		7-7-08	As Amended	2528	
201 KAR 20:070E	2500	5-5-08	201 KAR 33.020		
201 KAR 30:190E	1628	12-14-07	Amended	2211	
307 KAR 1:040E	909	10-8-07	As Amended	2529	7-7-08
401 KAR 9:010E	2275	3-3-08	301 KAR 1:130		
503 KAR 1:190E	2069	2-6-087	Amended	2427	(See 35 Ky R.)
Replaced		7-7-08	301 KAR 1:140		
900 KAR 6.050E	2502	4-29-08	Amended	2213	(See 35 Ky R.)
900 KAR 7.020E	958	9-18-37	301 KAR 1:146		
907 KAR 1.015E	164	7-12-07	Amended	2215	(See 35 Ky.R.)
907 KAR 1:160E	1653	12-5-07	301 KAR 1:155		
907 KAR 1.820E	1381	11-15-07	Amended	2217	
<b>ORDINARY ADMINISTRATIVE REGULATIONS:</b>			Amended	2552	(See 35 Ky.R.)
11 KAR 4.080			301 KAR 2.041		
Amended	2322	8-1-08	Amended	2222	
11 KAR 5:145			As Amended	2529	6-11-08
Amended	2323	8-1-08	301 KAR 2.049		
11 KAR 18:010		(See 35 Ky.R.)	Amended	2428	(See 35 Ky R.)
Amended	2325	8-1-08	301 KAR 2.081		
16 KAR 7:010		(See 35 Ky.R.)	Amended	2432	(See 35 Ky R.)
Amended	2413	8-1-08	301 KAR 2:111		
101 KAR 1:335			Amended	2435	7-9-08
Amended	2419	(See 35 Ky.R.)	301 KAR 2:122		
101 KAR 2:221	2487	(See 35 Ky.R.)	Amended	2437	7-9-08
103 KAR 3.030			301 KAR 2:172		
Amended	2329		Amended	2439	(See 35 Ky.R.)
As Amended	2516		301 KAR 2:178		
103 KAR 31:180	1592		Amended	2442	(See 35 Ky.R.)
As Amended	2524		301 KAR 3.022		
103 KAR 50:050	890		Amended	2224	(See 35 Ky.R.)
Amended	2421		301 KAR 4:201	2491	7-9-08
201 KAR 2:220			401 KAR 6.001	2626	(See 35 Ky.R.)
Amended	2421	8-1-08	401 KAR 3:310		
201 KAR 7:015			Amended	2562	(See 35 Ky.R.)
Amended	2557		401 KAR 6.320		
201 KAR 15:110			Amended	2576	(See 35 Ky.R.)
Amended	1528		401 KAR 6.350	2627	(See 35 Ky.R.)
As Amended	1948		401 KAR 9.010	2369	(See 35 Ky.R.)
201 KAR 16:110	1902		401 KAR 9.020	2370	(See 35 Ky.R.)
201 KAR 18:210			401 KAR 32:010		
Amended	2558		Amended	2448	(See 35 Ky R.)
201 KAR 20:070			401 KAR 32:050		
Amended	2559	(See 35 Ky.R.)	Amended	2449	(See 35 Ky.R.)
201 KAR 20:110			401 KAR 34:005		
Amended	2338		Amended	2451	(See 35 Ky.R.)
As Amended	2525	6-18-08	401 KAR 34:080		
201 KAR 20:161			Amended	2455	(See 35 Ky R.)
Amended	2341		401 KAR 35:005		
As Amended	2527	6-18-08	Amended	2457	(See 35 Ky R.)
201 KAR 20.225			401 KAR 35.080		
Amended	2343		Amended	2462	(See 35 Ky R.)
As Amended	2528	6-18-08	401 KAR 36.030		
201 KAR 20.360			Amended	2463	(See 35 Ky R.)
Amended	1792		401 KAR 37.005		
			Amended	2465	(See 35 Ky R.)
			401 KAR 37:040		
			Amended	2468	(See 35 Ky.R.)
			401 KAR 38.005		
			Amended	2470	(See 35 Ky.R.)



# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	34 Ky.R. Page No.	Effective Date	Regulation Number	34 Ky.R. Page No.	Effective Date
401 KAR 38:040			Amended	2607	
Amended	2474	(See 35 Ky.R.)	902 KAR 55:110		
401 KAR 43:005			Amended	2609	(See 35 Ky.R.)
Amended	2475	(See 35 Ky.R.)	907 KAR 1:013		
500 KAR 14:010			Amended	1560	
Amended	2580		907 KAR 1:160		
Withdrawn		7-18-08	Amended	1834	
500 KAR 14:020			Amended	2315	
Amended	2582		As Amended	2535	7-7-08
Withdrawn		7-18-08	907 KAR 1:479		
501 KAR 3:140			Amended	2611	(See 35 Ky.R.)
Amended	2476	(See 35 Ky.R.)	908 KAR 3:050		
501 KAR 6:120			Amended	2350	(See 35 Ky.R.)
Amended	2345	7-7-08	908 KAR 3:060		
501 KAR 6:140			Amended	2352	
Amended	2586	(See 35 Ky.R.)	As Amended	2540	6-18-08
501 KAR 6:999			910 KAR 1:160		
Amended	2347		Amended	1860	
As Amended	2531	7-7-08	921 KAR 3:030		
501 KAR 7:070			Amended	2623	(See 35 Ky.R.)
Amended	2481	8-1-08	921 KAR 1:400		
503 KAR 1:190	2534	7-7-08	Amended	1870	
702 KAR 3:270			As Amended	2143	
Amended	2231	(See 35 Ky.R.)	921 KAR 1:410		
702 KAR 4:180			Amended	1874	
Amended	2484	(See 35 Ky.R.)	As Amended	2146	
803 KAR 25:012			921 KAR 1:430	1909	
Amended	633		As Amended	2150	
806 KAR 12:180	1600	(See 35 Ky.R.)	921 KAR 2:015		
810 KAR 1:015			Amended	1879	
Amended			As Amended	2152	
Amended	1220		922 KAR 1:310		
Amended	2053		Amended	2355	(See 35 Ky.R.)
815 KAR 7:120			922 KAR 2:170		
Amended	2590	(See 35 Ky.R.)	Amended	1284	
815 KAR 7:125			As Amended	2543	6-18-08
Amended		(See 35 Ky.R.)	922 KAR 2:210		
900 KAR 6:050			Amended	1290	
Amended	2594		As Amended	2547	6-18-08
900 KAR 7:020	1334				
902 KAR 55:030					

## VOLUME 35

### EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

31 KAR 4:140E	505	8-8-08
101 KAR 2:066E	507	7-18-08
200 KAR 5:390E	509	7-17-08
201 KAR 27:100E	221	7-15-08
202 KAR 7:330E	226	7-11-08
302 KAR 76:110E	5	6-4-08
307 KAR 1 050E	510	7-21-08
401 KAR 10:001E	6	6-12-08
502 KAR 15:010E	229	7-15-08
502 KAR 32:010E	230	7-1-08
702 KAR 7:130E	233	6-13-08
803 KAR 25:089E	234	7-1-08
803 KAR 25:091E	236	6-1-08
806 KAR 2:092E	512	8-14-08
806 KAR 15 080E	514	8-14-08
806 KAR 17:180E	238	7-15-08
806 KAR 17:540E	516	7-15-08
806 KAR 17:545E	518	7-15-08
806 KAR 17:555E	521	7-15-08
907 KAR 1.825E	240	6-16-08
907 KAR 1.835E	524	7-17-08

907 KAR 1.911E(r)	248	6-16-08
922 KAR 1:360E	250	6-30-08

### ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 3:100		
Amended	63	
11 KAR 18:010		(See 34 Ky.R.)
As Amended	10	8-1-08
16 KAR 3:050		
Amended	77	
16 KAR 5:020		
Amended	80	
As Amended	535	
16 KAR 7:010		(See 34 Ky.R.)
As Amended	11	
17 KAR 3:020		
Amended	611	
31 KAR 4:140		
Amended	612	
101 KAR 1:335		(See 34 Ky.R.)
As Amended	256	
101 KAR 2:066		
Amended	614	
101 KAR 2:221		(See 34 Ky.R.)
As Amended	16	
103 KAR 1:150	675	
103 KAR 3:020		

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Regulation Number	35 Ky.R. Page No.	Effective Date	Regulation Number	35 Ky.R. Page No.	Effective Date
Amended	82		Amended	624	
Amended	576		201 KAR 41.065	679	
103 KAR 3.050			201 KAR 41 070		
Amended	87		Amended	626	
103 KAR 30:091			202 KAR 7:030		
Amended	96		Amended	326	
Amended	580		202 KAR 7:330	467	
103 KAR 31:200	452		202 KAR 7:510		
105 KAR 1:160			Amended	328	
Amended	101		300 KAR 6.020	204	
105 KAR 1:170			As Amended	544	
Amended	103		301 KAR 1:130		(See 34 Ky.R.)
As Amended	536		As Amended	20	7-9-08
105 KAR 1:180			301 KAR 1:140		(See 34 Ky.R.)
Amended	105		As Amended	548	
105 KAR 1:200			301 KAR 1:146		(See 34 Ky.R.)
Amended	108		As Amended	549	
As Amended	536		301 KAR 1:155		(See 34 Ky.R.)
105 KAR 1:210			As Amended	550	
Amended	111		301 KAR 1:201		
As Amended	538		Amended	335	
105 KAR 1:220			301 KAR 2.049		(See 34 Ky.R.)
Amended	115		As Amended	21	7-9-08
As Amended	541		301 KAR 2.081		(See 34 Ky.R.)
105 KAR 1:240			As Amended	23	7-9-08
Amended	117		301 KAR 2.082		
105 KAR 1:270			Amended	340	
Amended	119		301 KAR 2:132		
105 KAR 1.310			Amended	343	
Amended	121		301 KAR 2:172		(See 34 Ky.R.)
As Amended	542		As Amended	26	7-9-08
105 KAR 1:330			301 KAR 2:176		
Amended	124		Amended	347	
105 KAR 1:360			301 KAR 2:178		(See 34 Ky.R.)
Amended	127		As Amended	28	7-9-08
As Amended	544		301 KAR 2:300		
105 KAR 1.370			Amended	349	
Amended	128		301 KAR 3:022		(See 34 Ky.R.)
As Amended	544		As Amended	555	
200 KAR 5:390	676		301 KAR 4:070		
200 KAR 17:090	453		Amended	352	
201 KAR 1:160			307 KAR 1:050	680	
Amended	616		401 KAR 5:010		
201 KAR 1:171(r)	678		Amended	354	
201 KAR 9.011	455		401 KAR 5:012	470	
201 KAR 10:050			401 KAR 5:052	471	
Amended	316		401 KAR 5:057		
201 KAR 18:210		(See 34 Ky R.)	Amended	359	
As Amended	257		401 KAR 6.001		(See 34 Ky R )
201 KAR 20:070		(See 34 Ky.R.)	Amended	585	
As Amended	258		401 KAR 6.310		(See 34 Ky R.)
201 KAR 20:410			Amended	587	
Amended	317		401 KAR 6:320		(See 34 Ky.R.)
201 KAR 21:070			Amended	601	
Reprint	48		401 KAR 6:350		(See 34 Ky.R.)
201 KAR 27:100	456		Amended	605	
201 KAR 30.030			401 KAR 9:010		
Amended	618		Amended	34	(See 34 Ky.R.)
201 KAR 35:020			As Amended	259	
Amended	318		401 KAR 9.020		
201 KAR 35.040			Amended	35	(See 34 Ky.R )
Amended	320		401 KAR 10:001	208	
201 KAR 35:050			401 KAR 11:001	473	
Amended	324		401 KAR 11:010	474	
201 KAR 35.060	461		401 KAR 11:020	475	
201 KAR 35.070	463		401 KAR 11:030	476	
201 KAR 35.080	465		401 KAR 11:050	479	
201 KAR 41.020			401 KAR 11:060	481	
Amended	620		401 KAR 60:021	211	
201 KAR 41.040			401 KAR 10:026		
Amended	622		Amended	129	
201 KAR 41 060			401 KAR 10.029		

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	35 Ky.R. Page No.	Effective Date	Regulation Number	35 Ky.R. Page No.	Effective Date
Amended	157		Amended	641	
401 KAR 10:030			787 KAR 1:190		
Amended	161		Amended	400	
401 KAR 10:031			787 KAR 2:020		
Amended	177		Amended	401	
401 KAR 32:010		(See 34 Ky.R.)	805 KAR 8:060		
As Amended	260		Amended	645	
401 KAR 32:050			806 KAR 2:092	682	
Amended	37	(See 34 Ky.R.)	806 KAR 6:130	684	
As Amended	261		803 KAR 25:089		
401 KAR 34:005		(See 34 Ky R.)	Amended	404	
As Amended	262		803 KAR 25:091		
401 KAR 34:080		(See 34 Ky R.)	Amended	405	
Amended	39		806 KAR 12:180		(See 34 Ky.R.)
As Amended	265		As Amended	560	
401 KAR 35:005		(See 34 Ky.R.)	806 KAR 14:007		
As Amended	266		Amended	650	
401 KAR 35:080			806 KAR 15:080	686	
Amended	39	(See 34 Ky.R.)	806 KAR 17:005		
As Amended	269		Amended	652	
401 KAR 36:030		(See 34 Ky.R.)	806 KAR 17:180		
As Amended	270		Amended	407	
401 KAR 37:005			806 KAR 17:280		
Amended	42	(See 34 Ky.R.)	Amended	654	
As Amended	270		806 KAR 17:290		
401 KAR 37:040		(See 34 Ky.R.)	Amended	658	
As Amended	273		806 KAR 17:310		
401 KAR 38:005		(See 34 Ky.R.)	Amended	409	
Amended	45		806 KAR 17:360		
As Amended	273		Amended	411	
401 KAR 38:040		(See 34 Ky R.)	806 KAR 17:370		
As Amended	276		Amended	413	
401 KAR 43:005		(See 34 Ky.R.)	806 KAR 17:500		
As Amended	277		Amended	664	
401 KAR 50:066			806 KAR 17:540		
Amended	188		Amended	667	
500 KAR 3:010			806 KAR 17:545		
Amended	628		Amended	668	
500 KAR 3:020			806 KAR 17:555		
Amended	630		Amended	672	
501 KAR 3:140		(See 34 Ky.R.)	810 KAR 1:012		
As Amended	279		Amended	416	
501 KAR 6:140		(See 34 Ky.R.)	810 KAR 1:025		
As Amended	280		Amended	418	
501 KAR 6:200			811 KAR 1:070		
Amended	190		Amended	426	
502 KAR 15:010			815 KAR 7:070		
Amended	377		Amended	191	
502 KAR 30 060			As Amended	563	
Amended	379		815 KAR 7:120		(See 34 Ky R.)
502 KAR 32:010			Amended	305	
Amended	381		As Amended	565	
603 KAR 3 080			815 KAR 7:125		(See 34 Ky.R.)
Amended	383		Amended	307	
603 KAR 5:320			As Amended	567	
Amended	633		815 KAR 35:060		
702 KAR 7:130	483		Amended	195	
702 KAR 3:080			As Amended	568	
Amended	635		815 KAR 35:100		
702 KAR 3 270		(See 34 Ky R )	Amended	198	
As Amended	556		As Amended	570	
702 KAR 4:180		(See 34 Ky.R.)	902 KAR 45:150		
As Amended	32	7-7-08	Amended	433	
703 KAR 5:070			902 KAR 55:110		(See 34 Ky R.)
Amended	637		As Amended	283	
703 KAR 5:080			907 KAR 1:015		
Amemda	638		Amended	199	
704 KAR 3:340			Amended	41	
Amended	639		907 KAR 1:026		
725 KAR 1:030			Amended	436	
Amended	398		907 KAR 1:479		(See 34 Ky.R.)
787 KAR 1:110			Amended	309	

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907 KAR 1:626					
Amended	442				
907 KAR 1 825	484				
907 KAR 1:835	688				
907 KAR 3:205	492				
908 KAR 3:050		(See 34 Ky.R.)			
As Amended	284				
910 KAR 1:160		(See 34 Ky.R.)			
As Amended	285				
921 KAR 3:030		(See 34 Ky R )			
As Amended	290				
922 KAR 1:310	49	(See 34 Ky R.)			
Amended	49				
As Amended	292				
922 KAR 1:360					
Amended	446				

\* Statement of Consideration not filed by deadline

\*\* Withdrawn, not in effect within 1 year of publication

\*\*\* Withdrawn before being printed in Register

(r) Repealer regulation: KRS 13A 310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

## KRS SECTION

## REGULATION

## KRS SECTION

## REGULATION

## KRS INDEX

2.015	922 KAR 1:310		105 KAR 1:360
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13B.140	907 KAR 1:825	61.805-61.850	300 KAR 6:020
15A.160	500 KAR 3.020	61.870-61.884	103 KAR 3:020
16.505-16.652	105 KAR 1:210		103 KAR 3:050
	105 KAR 1:310		300 KAR 6:020
16.576	105 KAR 1:200	78.510-78.852	105 KAR 1:210
16.577	105 KAR 1:200		105 KAR 1:310
16.578	105 KAR 1:180	78.540	105 KAR 1:170
16.601	105 KAR 1:180	78.545	105 KAR 1:180
16.640	105 KAR 1:180		105 KAR 1:200
16.645	105 KAR 1:200		105 KAR 1:220
	105 KAR 1:220		105 KAR 1:330
16.595	105 KAR 1:200	78.616	103 KAR 30.091
17.115	502 KAR 30.060	91A.080	806 KAR 2.092
17.140	502 KAR 30.060	91A.0810	806 KAR 2:092
17.147	502 KAR 30:060	116.995	31 KAR 4:140
17.151	502 KAR 30.060	117.079	31 KAR 4:140
17.1522	502 KAR 30:060	117.085	31 KAR 4:140
17.160	502 KAR 30.060	117.995	31 KAR 4:140
17.165	922 KAR 1:310	119.265	31 KAR 4:140
17.170	502 KAR 32:010	131.020	103 KAR 3.020
17.171	502 KAR 32:010		103 KAR 3.050
17.172	502 KAR 32:010	131.030	103 KAR 3:020
17.173	502 KAR 32:010		103 KAR 3.050
17.174	502 KAR 32:010	131.041-131.081	103 KAR 3:020
17.175	502 KAR 32.010		103 KAR 3.050
17.500	922 KAR 1:310	131.081	103 KAR 3.020
17.550-17.991	501 KAR 6:200		103 KAR 3:050
18A.030	101 KAR 2.066	131.110	103 KAR 3 020
18A.110	101 KAR 2.066		103 KAR 3:050
18A.150	101 KAR 2.066	131.130	103 KAR 3.020
18A.165	101 KAR 2:066		103 KAR 3.050
40.320	17 KAR 3.020	131.155	103 KAR 3.020
40.325	17 KAR 3:020		103 KAR 3:050
42.470	103 KAR 3.050	131.170	103 KAR 3.020
45A	300 KAR 6:020		103 KAR 3.050
45 031	200 KAR 17:090	131.181	103 KAR 3.020
61.360	500 KAR 3.010		103 KAR 3 050
61.510-61.705	105 KAR 1:210	131.183	103 KAR 3.020
	105 KAR 1:310		103 KAR 3.050
61.525	105 KAR 1:170	131.190	103 KAR 3:020
61.526	105 KAR 1:170		103 KAR 3:050
61.530	105 KAR 1:170	131.340	103 KAR 3:050
61.540	105 KAR 1:170	131.500	103 KAR 3:050
61.542	105 KAR 1:170	131.510	103 KAR 3:050
61.545	105 KAR 1:170	131.540	103 KAR 3.050
61.546	105 KAR 1:160	131.570	787 KAR 1:110
61.5525	103 KAR 30:091	131.670-131.676	103 KAR 1:150
61.590	105 KAR 1:200	132.020	103 KAR 3 050
61.610	105 KAR 1:220	132.043	103 KAR 3.050
61.615	105 KAR 1:220	132.060-132.090	103 KAR 3:050
61.623	105 KAR 1:200	132.100-132.180	103 KAR 3.050
61.625	105 KAR 1:170	132.190	103 KAR 3.050
61.640	105 KAR 1:270	132.200	103 KAR 3.050
61.645	105 KAR 1:270	132.215	103 KAR 3:050
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	105 KAR 1:370	132.220-132.270	103 KAR 3.050
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61.552	105 KAR 1.330	132.310	103 KAR 3 050
61.5525	105 KAR 1:330	132.320	103 KAR 3:050
61.555	105 KAR 1:330	132.450	103 KAR 3.050
61.592	105 KAR 1:330	132.487	103 KAR 3:050
61.665	105 KAR 1:220	132.510	103 KAR 3.050
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134.430	103 KAR 3:050	139.185	103 KAR 3:020
134.440	103 KAR 3 050	139.210	103 KAR 3:020
134.500	103 KAR 3:050	139.230	103 KAR 3:020
134 580	103 KAR 3:020	139.240	103 KAR 3:020
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134.590	103 KAR 3:050	139.260	103 KAR 3:020
134 800	103 KAR 3 050		103 KAR 30:091
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134 830	103 KAR 3:050	139 483	103 KAR 3:020
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135.050	103 KAR 3:050	139 515	103 KAR 3:020
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138.270	103 KAR 3 050	142.327	103 KAR 3:050
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